88-6

DEFENSE ACQUISITION CIRCULAR

31 MARCH 1989 NUMBER 88-6

This Defense Acquisition Circular is issued by direction of the Secretary of Defense pursuant to the authority contained in 5 U.S. Code 301, 10 U.S. Code 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective 31 May 1989, in accordance with DoD FAR Supplement 201.301(S-70)(4).

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NOTE: Revisions in this DAC are issued as final rules except the revisions under Items X and XII which are issued as interim rules.

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ITEM I--SAFEGUARDING CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (AA&E) WITHIN INDUSTRY (INFORMATION ITEM)

Item II of DAC #88-4 deleted the AA&E coverage at DFARS Subpart 223.71 and the related clause at 252.223-7003 because of the cancellation of DoDI 5220.30, "Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives (AA&E) at Contractor Facilities" (canceled December 28, 1988). The DoDI has been replaced by DoD 5100.76-M, "Physical Security of Sensitive Conventional AA&E", as modified through Change 4, December 28, 1988, which is now the controlling document on AA&E. Appendix E of the DoD Manual provides physical security standards for DoD AA&E at contractors' facilities. The manual is available through the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487-4650.

ITEM II--SPECIAL PROHIBITION ON EMPLOYMENT (FINAL RULE)

Section 831 of the FY 1989 Department of Defense Authorization Act (Public Law 100-456) amended the provisions of 10 U.S.C. 2408(a) regarding employment prohibitions on persons convicted of fraud or other defense contract related felonies. The amendment added to existing prohibitions the additional prohibitions that defense contractors may not permit felons convicted of fraud or any other felony arising out of contracts with the Department of Defense to serve as a consultant to any defense contractor or in any other way as determined by regulation prescribed by the Secretary of Defense. This rule implements this amendment and adds "acting as an agent or representative" to the prescribed activities in order to make these prohibitions consistent with those contained in FAR 9.405. In addition, Section 831 increased the period of these employment prohibitions to a minimum of 5 years and permits waiver only in the interest of national security. These amended prohibitions were effective with enactment of Public Law 100-456 on September 29, 1988. A proposed rule with request for comments was published in the Federal Register on December 9, 1988 (53 FR 49694). This final rule revises

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existing DFARS coverage to reflect the above-referenced amendments and to provide for the waiver procedure. This rule is effective immediately.

Replacement pages: 203.5-1, 203.5-2, 252.203-1, and 252.203-2.

ITEM III--INSTRUCTIONS FOR COMPLETION OF DD FORM 350, INDIVIDUAL CONTRACTING ACTION REPORT (OVER $25,000), AND DD FORM 1057, MONTHLY CONTRACTING SUMMARY OF ACTIONS $25,000 OR LESS (FINAL RULE)

Revisions are made to DFARS 204.6 to clarify and/or correct guidance for completing DD Form 350, Individual Contracting Action Report (Over $25,000), and DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less. Information concerning the Contractor Establishment Codes has been updated to show the current contact points. This coverage was furnished through Departmental channels by Departmental Letter No. 89-05, dated 9 March 1989, effective upon receipt.

Replacement pages: 204.6-4, 204.6-8, 204.6-15, 204.6-16, 204.6-29, and 204.6-32 through 204.6-34.

ITEM IV--CONTRACT FILES (FINAL RULE)

DFARS 204.804-4 is revised to incorporate a requirement for the issuance of an Interim Contract Completion Statement (Notice of Physical Completion) by the office administering a contract, if other than the purchasing office. Issuance of this interim notice will assist purchasing offices in the timely completion of contract closeout actions. Other changes include substitution of the term "small purchase threshold" in place of references to "$10,000" in 204.804-5 and 204.804-70(a)(2), and deletion of the requirement for purchasing

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offices to issue a MILSCAP Format Identifier PK9, Contract Completion Statement, as cited in 204.804-5.

Replacement pages: 204.8-7 through 204.8-9.

ITEM V--EDITORIAL CORRECTION TO DFARS 208.405

DFARS 208.405-2(S-70) is revised to reflect the correct title which was changed at the time the coverage was revised in DAC #86-16.

Replacement page: 208.4-14.

ITEM VI--CONTINGENCY CONTRACTING THRESHOLDS (FINAL RULE)

DFARS 213.404(a)(3) is added to permit funds to be used up to $2,500 for each overseas transaction in support of contingencies declared by the Secretary of Defense.

DFARS 213.505-3(b)(1)(ii) is added to allow warranted contracting officers to use Standard Form 44 up to $25,000 for overseas transactions in support of contingencies declared by the Secretary of Defense.

Replacement pages: 213.4-2 and 213.5-2.

ITEM VII--CLARIFICATION OF ADEQUATE PRICE COMPETITION (FINAL RULE)

DFARS 215.6 and 215.8 are revised to clarify the existing coverage on Adequate Price Competition. Clarification is needed to explain that adequate price competition may exist even where price is not a primary factor in evaluation of proposals, regardless of the type of contract contemplated. A definition of cost realism is included which is distinguished from the detailed cost analysis typically conducted in sole source procurements.

Item VII (Continued)

The Deputy Assistant Secretary of Defense for Procurement (DASD(P)) issued a memorandum dated May 1, 1987, on Adequate Price Competition. The memorandum expressed concern that contracting officers were requesting detailed cost or pricing data and then conducting detailed cost and profit analysis even though adequate price competition had resulted or was expected to result on the procurement. The memorandum stated that there should rarely be a need to obtain certified cost or pricing data in a competition although some cost data may be required to determine cost realism to ensure that the offeror adequately understands the scope of the work. Unnecessarily requiring cost or pricing data is not in the best interest of DoD because it leads to increased proposal preparation costs, extends procurement lead time, and wastes both contractor and Government resources. This final rule implements the policy statement of the DASD(P) memorandum. A proposed rule with request for comments was published in the Federal Register on March 31, 1988 (53 FR 10409). This final rule is effective May 31, 1989.

Replacement pages: 215.6-1, 215.8-1 through 215.8-3, 215.8-7, and 215.8-12.

ITEM VIII--CERTIFICATION OF COST OR PRICING DATA (FINAL RULE)

DFARS 215.804-3 is revised to provide, for nonprofit educational institutions and other nonprofit organizations, waiver of the requirement for certification, but not submission, of cost or pricing data for cost-reimbursement-no-fee contracts and subcontracts. This rule also completely exempts the Canadian Commercial Corporation and its subcontractors from submitting either cost or pricing data or a certification of any such data.

Replacement page: 215.8-2.

ITEM IX--EDITORIAL CORRECTIONS TO PART 225

(a) Section 225.001 "Definitions" is relocated to Section 225.101 to make the coverage consistent with the FAR.

(b) Paragraph 225.603(b)(3), "Customs Forms and Duty-Free Entry Certificates", is redesignated as paragraph (5) to reflect correct sequence of paragraphs.

(c) Paragraph 225.603(b)(6), "Immediate Entry and Release", is redesignated as paragraph (c) to conform to the FAR.

Replacement pages: 225.0-1, 225.1-1 through 225.1-3, and 225.6-6.

ITEM X--PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES FOR THE CONDUCT OF STRATEGIC DEFENSE INITIATIVE RESEARCH, DEVELOPMENT, TEST OR EVALUATION (RDTE) (INTERIM RULE)

Subpart 225.7013, Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE, is added to implement the National Defense Authorization Act for Fiscal Years 1988 and 1989, Public Law 100-180, at Section 222. The coverage provides that Department of Defense funds may not be used for any contract with a foreign government or foreign firm for research, development, test or evaluation in connection with the Strategic Defense Initiative (SDI) Program unless the Secretary of Defense certifies to Congress in writing at any time during such fiscal year that work under the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which it would be performed by the foreign government or firm. The prohibition does not apply to contracts awarded to a foreign government or firm if: (a) the contract is to be performed within the United States; (b) the contract is for research, development, test or evaluation in connection with antitactical ballistic missile systems; or (c) the foreign government or foreign firm agrees to share a substantial portion of the total cost. Further, the law does

ITEM X (Continued)

not apply to contracts awarded before its enactment on December 14, 1987, nor does it apply to subcontracts. A related clause is added at 252.225-7028.

Replacement pages: 225.70-11 through 225.70-13, 252.225-25, and 252.225-26.

ITEM XI--SEPARATE BID BONDS FOR CONSTRUCTION CONTRACTS (FINAL RULE)

DFARS 228.101 is revised and a clause at 252.228-7007 is added to require submission of separate bid bonds vice separate bid guarantees for construction contracts. This coverage requires that DoD prime contractors furnish a separate bid bond or certain other public debt obligations of the United States by the time set for opening of bids. A proposed rule with request for comments was published in the Federal Register on December 23, 1987 (52 FR 48549).

Replacement pages: 228.1-1 and 252.228-12.

ITEM XII--OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS (INTERIM RULE)

DFARS Subpart 247.5 has been revised in its entirety, the clause at 252.247-7200 has been deleted, and a provision at 252.247-7202 and a clause at 252.247-7203 have been added to implement the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. For such cargo, this constitutes an approved class deviation from FAR Subpart 47.5 in its entirety, and from the clause at FAR 52.247-64.

Contractors and contracting officers should note the new requirement for a solicitation provision, requiring offerors to state whether ocean transportation may be required under the

Item XII (Continued)

resultant contract or under any subcontracts. The cargo to which the U.S.-flag requirements apply is that which meets the new definition of "supplies" as defined in this coverage. The regulation no longer limits the application of the U.S.-flag requirements to supplies that are owned by the DoD at the time of ocean shipment.

Under the revised procedures, contracting officers are required to forward a copy of the first page of the applicable DD Form 350 to the U.S. Maritime Administration, when awarding a contract (other than a contract for direct purchase of ocean transportation services, or with a value below the small purchase threshold in FAR Part 13), which will require ocean transportation of supplies as defined in the subpart.

The revisions included in this Item XII shall be effective for solicitations and resulting contracts issued on or after 31 May 1989. However, contracting officers are authorized to apply the provisions of this Item XII prior to that time in lieu of the existing DFARS Subpart 247.5 and the existing clause at 252.247-7200, upon issuance of this DAC, if to do so will not unnecessarily delay procurements. When applied, these revisions supersede the deviation requiring the use of the clause at FAR 52.247-64 with its appropriate Alternate, as directed in Deputy Assistant Secretary of Defense Memorandum dated 4 April 1988.

Replacement pages: 247.5-1 through
247.5-5, and
252.247-23 through
252.247-26.

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REPLACEMENT PAGES

Remove the following pages:	Insert the following pages:
203.5-1 and 203.5-2	203.5-1 and 203.5-2
204.6-3 and 204.6-4	204.6-3 and 204.6-4
204.6-7 through 204.6-38	204.6-7 through 204.6-39
204.8-7 through 204.8-10	204.8-7 through 204.8-10
208.4-13 and 208.4-14	208.4-13 and 208.4-14
213.4-1 through 213.4-4	213.4-1 through 213.4-4
213.5-1 and 213.5-2	213.5-1 and 213.5-2
215.6-1 and 215.6-2	215.6-1 and 215.6-2
215.8-1 through 215.8-30	215.8-1 through 215.8-31
225.0-1 through 225.0-3	225.0-1
225.1-1 through 225.1-8	225.1-1 through 225.1-10
225.6-5 and 225.6-6	225.6-5 and 225.6-6
225.70-11	225.70-11 through 225.70-13
228.1-1 through 228.1-3	228.1-1 through 228.1-3
247.5-1 through 247.5-3	247.5-1 through 247.5-5
252.203-1 through 252.203-5	252.203-1 through 252.203-5
252.225-25	252.225-25 and 252.225-26
252.228-11 and 252.228-12	252.228-11 and 252.228-12
252.247-23	252.247-23 through 252.247-26

PART 203--IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
SUBPART 203.5--OTHER IMPROPER BUSINESS PRACTICES

203.502 Subcontractor Kickbacks. Suspected violations of the Anti-Kickback Act shall be reported in accordance with 203.000 and Departmental procedures.

203.570 Implied Endorsement by Military Resale Activities. The contracting officer shall include the clause at 252.203-7000 in all solicitations and contracts for supplies purchased for resale to preclude any implied endorsement by military resale activities of commercially advertised products.

203.571 Employment Prohibitions on Persons Convicted of Fraud or Other Defense Contract-Related Felonies.

203.571-1 Scope. This subpart prescribes policies and procedures to implement 10 U.S.C. 2408 which prohibits defense contractors from employing in a managerial or supervisory capacity on any defense contract, persons convicted of fraud or any other felony arising out of a contract with the Department of Defense, or allowing those persons to serve on the contractor's board of directors, as a consultant, or as an agent or representative. The nature and length of the statutory prohibitions depend upon the date of conviction.

203.571-2 Definitions.

"Arising out of a contract with the Department of Defense", as used in this subpart, means any act in connection with (a) attempting to obtain, (b) obtaining, or (c) performing, a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this subpart, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

203.571-3 Policy.

(a) It is DoD policy that a contractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve (1) in a management or supervisory capacity on any defense contract or subcontract, or (2) upon its board of directors, or (3) as a consultant, or (4) as an agent or representative, for a period of five years from the date of conviction or for the period of any

resultant debarment of the convicted person, whichever is longer, unless waived in accordance with agency procedures in the interests of national security.

(b) Contractors shall not allow a person, convicted on or before September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve in a management or supervisory capacity on any defense contract or subcontract or upon its board of directors, for a period of one year from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer.

203.571-4 Reporting. When a defense contractor is found to have violated the prohibition in 203.571-3 above, a report shall be prepared and forwarded in accordance with agency procedures (see DoD Directive 7050.5).

203.571-5 Contract Clause. The contracting officer shall insert the clause at 252.203-7001, Special Prohibition on Employment, in all solicitations and contracts other than those entered into using the small purchase procedures of FAR Part 13.

203.571-6 Waiver.

(a) Requests for waiver submitted under DFARS 252.203-7001(e) shall be reviewed by the contracting officer. If the contracting officer decides the requested waiver is not required in the interests of national security, the contracting officer shall deny the request and advise the contractor accordingly. If the contracting officer decides the requested waiver may be in the interests of national security, the contracting officer shall forward the request to the Head of the Agency or designee.

(b) The Head of the Agency or its designee shall report all waivers granted and the reasons therefor to the Under Secretary of Defense for Acquisition who shall forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

line number. Where appropriate, there is further segmentation by code descriptors. This provides for ease in identifying coverage for a specific item and entry code. For example, 204.672-5(b) Item B13 Code 1 readily identifies the citation as belonging to Code 1 of Item B13 of Part B of the DD Form 350.

204.671 Individual Contracting Action Report (DD Form 350).

204.671-1 Scope. This section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD-P&L(M)1014.

204.671-2 Purpose. The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD contracting actions; types of contracts used; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the extent competed and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequacy of the way in which the DoD acquisition program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO and others. The data frequently provide a basis for new or revised acquisition policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671-3 Applicability and Coverage.

(a) DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures, labor statute requirements and contracting methodology. Part D gathers data relating to the various Socioeconomic programs to which DoD acquisitions are subject. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared for each contracting action obligating or deobligating more than $25,000 which is executed by a Component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, contracting offices shall submit an automated record in lieu of a hardcopy DD Form 350. The contract file shall contain the hardcopy DD Form 350, an automated facsimile or an electronic equivalent as directed by the headquarters of the Departments for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671-5(b), Item B9). Multiple reports may be required if more than one type of contract is involved (see 204.671-5(c) Item C5(i)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for purchase of land, or rental or lease of real property where the contracting action was executed by GSA.

(3) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(4) Transactions which involve Government bills of lading or transportation requests.

(5) Grants for basic research with educational institutions and other nonprofit organizations.

(6) Orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders against indefinite delivery contracts for petroleum and petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported at the time of contract award.

(7) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(8) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(9) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(10) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities,

(i) For DoD contracts, enter the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting office and the fiscal year in accordance with 204.7003-1(a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS-00S-27773, enter GS00S27773; for GP-16251 A, enter GP16251A, etc.).

Item B2, Modification, Order or Other Supplementary Procurement Instrument Identification Number. If applicable, enter the supplemental procurement identification number (up to 19 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7001. Usually calls and orders will be assigned a four-position number in accordance with 204.7004-4. Usually a modification, including a modification of a call or order, will be assigned a six-position modification number in accordance with 204.7004-3 or 204.7004-4(b) respectively.

Item B3, Action Date. Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the funds availability.

Item B4, Completion Date. Enter the year, month and day of the last contract delivery date or the end of the performance period as set forth in the contract. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102.

Item B5, Contractor Identification Information. The Contractor name and codes requested in the items B5A through B5E refer to the contractor whose name and address appear in the contract document. For contracts placed with the Small Business Administration pursuant to the Small Business Act, Public Law 85-536, section 8(a), or orders placed against a contract awarded by another agency, enter the name and codes for the contractor establishment which will be performing

under the contract. For Federal Supply Schedule orders, enter the name and codes of the contractor whose name appears on the schedule, not the name and codes of the agent to whom orders may be sent. For awards to the Canadian Commercial Corporation (CCC), enter the name and codes of the appropriate CCC office, except as noted in Item B5B.

Item B5A, Contractor Establishment Code.

(i) Enter the 9-position Contractor Establishment Code, assigned by the Federal Procurement Data Center (FPDC), that identifies the contractor.

(ii) The Contractor Establishment Code is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable Contractor Establishment Code;

(C) If not provided by the successful offeror, the FPDC Contractor Establishment Code file Alphabetical Listing shall be consulted.

(D) If this listing has no entry or has multiple Contractor Establishment Codes for the establishment, the applicable Contractor Establishment Code shall be obtained by contacting the office assigned responsibility by FPDC to provide a code. Contracting offices may request a code by any of the following methods:

1. Telephoning 800-397-4472 or 215-776-1710/1764/1769/1788;
2. Telefaxing 215-398-3688;
3. Mailing inquiries to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18195.

All requesters should provide the following information:

Name of requesting contracting office;
Contracting office location (city/town; state/country);
Contracting office area code and commercial telephone number;
Name of individual making the request;
Total number of requests, if more than one; and
Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable, as displayed in Items B5C and B5D.

Item B5B, Commercial and Government Entity (CAGE) Code.

(i) Enter the 5-position code assigned by the Defense Logistics Services Center (DLSC) that identifies the Contractor plant or establishment.

(ii) For awards to the Canadian Commercial Corporation (CCC), enter the code which identifies the contractor establishment performing under the contract.

(iii) The CAGE code is available from one or more of the following sources:

(A) The offeror's response to the solicitation;

(B) The bimonthly H-8 publication issued by DLSC-JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084, telephone numbers: AUTOVON 932-4725, FTS 522-4725, commercial (616) 961-4725.

(C) On-line access to the CAGE file through the Defense Integrated Data System (DIDS);

(D) On-line access to the Defense Logistics Agency CAGE file through the DLA Network; or

(E) Submission of a DD Form 2051, Request for Assignment of a CAGE Code, or electronic equivalent to DLSC-FBA at the above address. It is the responsibility of the contracting activity to request the assignment of the CAGE code by completing Section A of the DD Form 2051 - Request for Assignment of a Commercial and Government Entity (CAGE) Code. (See 253.303-70-DD-2051.) The prospective contractor will complete Section B of the form. The completed form will be submitted by the contracting activity to DLSC-FBA for processing and code assignment after it has verified the data submitted by the contractor.

(iv) Questions concerning obtaining computer tapes, electronic updates or code assignments should be directed to DLSC, Attn: DLSC-FBA, telephone numbers: AUTOVON 932-4358, FTS 522-4358, commercial (616) 961-4358.

Item B5C, Contractor name. In the space provided, enter the name (including division name) of the contractor.

Item B5D, Contractor address. In the space provided, enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

Item B5E, Contractor's Taxpayer Identification Number (TIN). When required by FAR Subpart 4.9, enter the TIN that identifies the contractor receiving the award. Otherwise, leave this item blank.

Item B5F, Parent TIN. When required by FAR Subpart 4.9, enter the TIN of the parent company (common parent). Otherwise, leave this item blank.

Item B5G, Parent Name. If Item B5F is completed, enter the name of the contracotr's parent company (common parent). Otherwise, leave this item blank.

Item B6, Principal Place of Performance. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is performed for the Government, including military installations.

(i) If more than one location is involved, show the location involving the largest dollar amount of the acquisition. Do not show more than one location in Item B6.

(ii) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(iii) For construction contracts, report the actual site of construction.

(iv) For architect-engineering contracts, report the planned site of the construction.

(v) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(vi) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

Item B6A, City or Place Code.

(i) Where the place of performance is in the United States and Outlying Areas, enter the city or place code of the principal place of performance from FIPS PUB 55-2. If the city or locality is not listed, find the appropriate county in FIPS PUB 55-2 and enter the 5-digit place code for the county. For Washington, DC, enter 50000. It may be necessary to refer to FIPS PUB 55-2, Paragraph 5.2, Entry Selection With the Aid of the Class Code, to ensure that the correct city or place code is chosen. The class code must be used in addition to the place code in many instances to correctly identify the code which most accurately identifies the place of performance.

(ii) Leave this item blank for foreign countries.

Item B6B, State or Country Code.

(i) Enter the numeric state code for the United States and Outlying Area. FIPS PUB 5-2, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas, or FIPS PUB 55-2 may be used for the identification of states and state equivalents in the United States and Outlying Areas.

(ii) Enter the alpha country code from FIPS PUB 10-3, Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions, to identify foreign countries.

Item B6C, City or Place/State or Country Names. Enter the name of the principal place of performance. If the location is the same as for Item B5D, enter the word "same". Do not leave blank.

Item B7, Type of Obligation. This item is used to identify the nature of the amount to be entered in Item B8. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

Item B8, Total Dollars. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

Item B9, Foreign Military Sale.

(i) If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. Any part of $25,000 or less shall be reported on the DD Form 1057.

(ii) Enter Code Y if the contracting action is under foreign military sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter Code N.

Item B10, Multiyear Contract. Enter Code Y if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise, enter Code N.

Item B11, Total Multiyear Value. Enter the estimated multiyear contract value if Item B10 is coded Y and Item B13 is coded 1 or 3. Enter whole dollars only. Otherwise, leave this item blank.

Item B12, Principal Product or Service.

Item B12A, FSC or Service Code. Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD Form 350 must contain a 4-character entry for this item. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(i) Research, development, test, and evaluation (RDT&E) is defined in FAR 35.001. Each DD Form 350 action for RDT&E shall be assigned a code beginning with the letter "A" in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(ii) Services. All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(iii) Supply. Acquisition of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

Item B12B, DD Claimant Program Code. Enter the appropriate code that identifies the commodity described in Item B12E. Claimant Program Codes are defined in Section III, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M).

(i) If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(ii) If the description in Item B12E is for research and development, the objective of the research and development shall control the Claimant Program code to be entered; e.g., if the objective of the research and development is a guided missile, enter Code A20.

(iii) If the description in Item B12E is for research that cannot be identified with a particular claimant program, enter Code S10.

(iv) Contracts for ship repair, inspection and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible.

(v) Equipment rental (including rental of automated data processing equipment (as defined at Part 270)) and utility services shall be coded S10.

(vi) If a particular claimant program cannot be identified, enter Code S10 for services or code C9E for supplies or equipment.

Item B12C, System or Equipment Code. Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M). If the action is funded by the Strategic Defense Initiative (SDI), enter code CAA in this item in preference to any other applicable code. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition. If a weapon system or equipment code is not applicable, enter 3 zeros. DLA activities will use the code assigned by the sponsoring Service.

Item B12D, Standard Industrial Classification (SIC) Code. This item identifies the SIC of the procurement (as opposed to the SIC of the Manufacturer or Dealer). Enter the SIC Code in effect at the time of award from the OMB Standard Industrial Classification Manual. If

more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

Item B12E, Name or Description. Enter the name or brief description of the commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying program number; e.g., WS-107A, can be used without classifying the report.

Item B13, Kind of Contracting Action.

(i) Enter one of the available codes as appropriate.

(ii) For a contract action which initially funds an award made in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons, enter the code best describing the action.

Code 1 - Initial Letter Contract. Enter this code when a new letter contract is executed. For a letter contract which is designated as a modification of an existing contract, enter Code A.

Code 2 - Definitive Contract Superseding Letter Contract. Enter this code when applicable. Enter code A for a definitive modification which supersedes a letter contract designated as a modification of an existing contract.

Code 3 - Definitive Contract (including notice of award). Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

Code 4 - Order Against DoD Basic Ordering Agreement. Enter this code when reporting orders against basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A through G, as appropriate, for modifications of such orders.

Code 5 - Order Against DoD Contract. Enter this code when reporting orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders placed against DoD contracts with the Small Business Administration 8(a) Program. Also use this code for contracting actions placed with workshops for the blind or other severely handicapped. Use Codes A through G, as appropriate, for modifications of such orders.

Code 6 - Order/Modification Under Federal Supply Schedule. Enter this code for all contracting actions (including modifications) under a Federal Supply Schedule contract (see FAR 8.401). This includes

contracting actions against Veterans Administration Supply Schedules, GSA ADP Schedule contracts and GSA Area Contracts for Utility Services.

Code 7 - Order Against Another Federal Agency's Contract. Enter this code for orders against a contract awarded by another Federal agency, other than a Federal Supply Schedule. Code 7 includes modifications and orders against contracts written by the Government Printing Office,. Federal Prison Industries, Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy.

Code 8 - Action With Another Federal Agency. Enter this code for all contracting actions, including modifications, placed directly with another Federal Agency where the Federal Agency is acting as the contractor. Use code 7 for orders placed with a contractor who is performing on a contract written by another Federal Agency.

Code A - Additional Work, New Agreement. Enter this code when additional work is acquired by means of a bilateral supplemental agreement which increases the scope of existing contracts, including letter contracts.

Code B - Additional Work, Other. Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(i) Exercise of options for increased quantities or extended performance.

(ii) Incremental yearly buys under multiyear contracts.

(iii) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

Code C - Funding Action. Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year.

Code D - Change Order. Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

Code E - Termination for Default. Enter this code for termination for default.

Code F - Termination for Convenience. Enter this code for termination for convenience.

Code G - Cancellation. Enter this code for a cancellation action. Do not use this code to report the cancellation of a DD Form 350. (See Item A1.)

(c) Part C of DD Form 350. The following rules apply to each of the items listed in Part C of DD Form 350:

(1) If Item B9 is coded Y or Item B13 is coded 8, leave all items in this Part C blank.

(2) If Item B13 is coded 1 through 4, 6 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(3) If Item B13 is coded 5, enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(4) If Item B13 is coded 7, complete Items C1, C2, C3, C5, C7, C8, C9, C10, C13A, C13B & C13D based on the information obtained from the agency which awarded the initial contract. Leave Items C4, C6, C11 and C13C blank. Complete Item C12 based on information in the contract document.

(5) If Item B13 is coded B through G, the correct coding is controlled by the date of the solicitation.

(i) For solicitations issued prior to 1 April 1985 (pre-CICA), leave items C6 through C9 blank and enter the same code in each other item in Part C that was reported for the original contract governing this transaction.

(ii) For solicitations issued on or after 1 April 1985 (post-CICA), enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(6) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

Item C1, Synopsis.

Code Y - Enter if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

Code N - Enter if Code Y does not apply and complete Item C2.

Item C2, Reason Not Synopsized. Leave blank if Item C1 was coded Y, if not, enter the appropriate code.

Code A - The action was not synopsized due to urgency.

Code B - The action was not synopsized due to some other reason.

Item C3, Extent Competed. Enter the appropriate code shown below.

Code A - Competed Action. Enter code A if Item B13 is coded 6 or when any of the following conditions apply:

(i) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(ii) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(iii) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., 8(a) awards; brand name commercial products for authorized resale; or awards for utilities, except telecommunications, are excluded from Code A and shall be reported in Code B.);

(iv) Contract action resulted from a contract awarded prior to CICA that used two-step sealed bidding, other sealed bidding, or was negotiated competitively.

Code B - Not Available for Competition. Enter code B when any of the following conditions apply to the award:

(i) Awards to regulated monopolies for utilities, except telecommunications, where the price negotiated is based on prices set by law or regulation;

(ii) Brand name commercial products for authorized resale;

(iii) Procurements authorized or required by statute to be awarded to a designated source;

(iv) If the contract was awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act pursuant to FAR 19.8;

(v) International Agreements;

(vi) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

(Note: DoD competition reports include the categories listed above and also include FMS awards and actions with another Agency in the category of "Not Available for Competition", although these actions are not reported in Item C3.)

Code C - Follow-on to Competed Action. Enter code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions (see Item C4, Code C).

Code D - Not Competed. Enter code D when Codes A, B, or C do not apply.

Item C4, Competitive Characteristics. If Item C3 is coded B, do not complete this item. If Item B13 is coded 6, enter Code A. If

Item B13 is coded 7, leave Item C4 blank. Otherwise, enter the code below which corresponds to the action:

Code A - Price Competition.

(i) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). However, actions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition."

(ii) Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code A.

(iii) A contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(iv) Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, enter code E or F as appropriate.

(v) In no case shall cost-reimbursement type contracts be coded A.

(vi) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition", even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition".

Code B - Design or Technical Competition. Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

Code C - Follow-on After Price Competition and
Code D - Follow-on After Design/Technical Competition.

(i) A follow-on contract means a new acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific

military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical) shall be reported as Code C or D, as appropriate.

(ii) For follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis, enter code E or F as appropriate.

Code E - Noncompetitive - Catalog or Market Price. A contracting action shall be reported Code E if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public as defined in FAR 15.804-3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in Code A above have been met, enter Code A versus Code E.

Code F - Noncompetitive - Other. Enter Code F if there was no competition in the award, the work involved was not a follow-on acquisition reportable above, and the reasonableness of price was not based on established catalog or market price reportable above. Also enter this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, unless a catalog or market price applies.

Item C5, Type of Contract.

(i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported:

(ii) Multiple contract types. Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Form 350 reports shall equal the total contract action.

(iii) Letter contracts. When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

Code A - Fixed Price Redetermination.

Code J - Firm Fixed Price.

Code K - Fixed Price Economic Price Adjustment.
Code L - Fixed Price Incentive.
Code R - Cost Plus Award Fee.
Code S - Cost Contract.
Code T - Cost Sharing.
Code U - Cost Plus Fixed Fee.
Code V - Cost Plus Incentive Fee.
Code Y - Time and Materials.
Code Z - Labor Hour.

Item C6, Number of Offerors Solicited. If Item B13 is coded 6, enter Code 2. If Item B13 is coded 7, leave Item C6 blank. Otherwise, enter the code below which describes the number of offerors solicited.

Code 1 - Enter if only one offeror was solicited.
Code 2 - Enter if more than one offeror was solicited.

Item C7, Number of Offers Received. Enter the code below which describes the number of offers received. If Item B13 is coded 6, enter Code 2.

Code 1 - Enter where only one offer was received.
Code 2 - Enter when more than one offer was received.

Item C8, Solicitation Procedures.

(i) This item pertains to the requirements of FAR Part 6, Subparts 6.1, 6.2, and 6.3, (with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C9 below). Codes A through K designate the full and open competition requirements set forth in FAR Part 6. Code M designates actions which do not require the application of the Competition in Contracting Act (see FAR 6.001-(b)). Code N designates exceptions to full and open competition. (See FAR 6.3).

(ii) Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall be reported the same as the initial contract when the conditions in FAR 6.001(e) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order.

(iii) If Item B13 is coded 6, enter Code B for single award schedules or Code F for multiple award schedules.

(iv) Enter Code K for all set-asides, including a Small Disadvantaged Business Set-Aside (see 206.203-70), a total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) (see 206.270), or a portion of a Broad Agency Announcement (BAA) which was set-aside for HBCUs or MIs.

(v) Enter the code below which accurately describes the action.

Code A - Full and Open Competition--Sealed Bidding. Enter if the action resulted from an award pursuant to FAR 6.102(a).

Code B - Full and Open Competition--Competitive Proposals. Enter if the action resulted from an award pursuant to FAR 6.102(b).

Code C - Full and Open Competition--Combination. Enter if the action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D - Architect-Engineer. Enter if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E - Basic Research. Enter if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F - Multiple Award Schedule. Enter if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

Code G - Alternate Source--Reduced Cost. Enter if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H - Alternate Source--Mobilization. Enter if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J - Alternate Source--Engineering/R&D Capability. Enter if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K - Set-Aside. Enter if the action resulted from use of procedures for set-asides pursuant to 206.203-70, 206.270 or FAR 6.203.

Code M - Otherwise Authorized by Statute. Enter if the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR Part 6 (See FAR 6.001(b)). Code M should not be used for statutes addressed in FAR 6.302-5; these statutes require Code N in Item C8 and Code 5A in Item C9.

Code N - Other Than Full and Open Competition. Enter if the action resulted from use of other than full and open competition pursuant to FAR 6.3. Specifically included are those awards authorized or required by statute where, pursuant to FAR 6.302-5, acquisition was made from a specified source or other agency: Federal

Prison Industries (UNICOR); qualified nonprofit agencies for the blind or other severely handicapped; Government printing or binding; or the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

Item C9, Authority for Other Than Full and Open Competition. Enter the appropriate code below when Item C8 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A - Unique Source. Enter if the action was justified pursuant to FAR 6.302-1(b)(1).

Code 1B - Follow-on Contract. Enter if action was justified pursuant to FAR 6.302-1(a)(2)(ii).

Code 1C - Unsolicited Research Proposal. Enter if action was justified pursuant to FAR 6.302-1(a)(2)(i).

Code 1D - Patent/Data Rights. Enter if action was justified pursuant to FAR 6.302-1(b)(2).

Code 1E - Utilities. Enter if action was justified pursuant to FAR 6.302-1(b)(3).

Code 1F - Standardization. Enter if action was justified pursuant to FAR 6.302-1(b)(4).

Code 1G - Only One Source--Other. Enter if the action was justified pursuant to FAR 6.302-1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A - Urgency. Enter if action was justified pursuant to FAR 6.302-2.

Code 3A - Mobilization. Enter if action was justified pursuant to FAR 6.302-3(a)(2)(i).

Code 3B - Essential R&D Capability. Enter if action was justified pursuant to FAR 6.302-3(a)(2)(ii).

Code 4A - International Agreement/Foreign Military Sales. Enter if action was justified pursuant to FAR 6.302-4.

Code 5A - Authorized by Statute. Enter if action was justified pursuant to FAR 6.302-5(a)(2)(i).

Code 5B - Authorized Resale. Enter if action was justified pursuant to FAR 6.302-5(a)(2)(ii).

Code 6A - National Security. Enter if action was justified pursuant to FAR 6.302-6.

Code 7A - Public Interest. Enter if action was taken pursuant to FAR 6.302-7.

Item C10, Subject to Labor Standards Statutes. If Item B13 is coded 6, leave Item C10 blank. Otherwise, enter the appropriate code as follows:

Code A - Walsh-Healey Act, Manufacture. Enter this code when subject to the provisions of FAR 22.6 and the offeror represents that it is a manufacturer.

Code B - Walsh-Healey Act, Regular Dealer. Enter this code when subject to the provisions of FAR 22.6, and the offeror represents that it is a regular dealer.

Code C - Service Contract Act. Enter this code when subject to the provisions of the Service Contract Act (see FAR Part 37).

Code D - Davis-Bacon Act. Enter this code when subject to the Davis-Bacon Act.

Code Z - Not Subject to Above. Enter this code when this action is not subject to any of the statutory requirements above.

Item C11, Certificate of Current Cost or Pricing Data. If Item B13 is coded 6 or 7, leave Item C11 blank. Otherwise, enter the appropriate code below:

Code Y - A certificate of current cost or pricing data (see FAR 15.804-4) was obtained.

Code N - A certificate was not obtained.

Code W - The requirement was waived.

Item C12, Contract Financing (Progress Payments or Advance Payments). Enter the appropriate code as follows:

Code A - Enter if the action contains the clauses at 252.232-7007, FAR 52.232-16, or Alternate I.

Code B - Enter if the action contains the clause at 252.232-7004.

Code C - Enter if the action provides Percentage of Completion Progress Payment financing (see 232.102(e)(2)) and is for either:

(i) construction; or

(ii) shipbuilding and ship conversion, alteration or repair.

Code D - Enter if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4 and FAR 32.501-2).

Code Z - Enter if none of the above apply.

Item C13, Foreign Trade Data. The term "United States" (U.S.), as used in this item, includes the United States and Outlying Areas as defined in this subpart, but excludes the Trust Territory of Palau.

Item C13A, Number of Offerors. Enter the number of offerors of foreign end products as defined in FAR 25, or services performed by foreign concerns. If zero, enter 0; if greater than 9, enter 9.

Item C13B, Buy American Act Percent Difference.

(i) Enter 2 zeros (00) if the evaluation factor under the Buy American Act is not used.

(ii) If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a two-position whole number (i.e., for 5%, enter 05; for 11%, enter 11).

Item C13C, Place of Manufacture of Foreign Product.

(i) If Item B13 is coded 6 or 7, leave Item C13C blank. Otherwise, enter the appropriate code shown below:

Code A - Enter if the end product offered is manufactured in the U.S. but 50% or more of the cost of components represents components manufactured outside the U.S.

Code B - Enter if the end product offered is manufactured, mined, or grown outside the U.S. or the service shown is performed by a foreign concern.

(ii) If neither code applies, leave blank.

Item C13D, Country of Origin. If the product is a foreign end product, or the service is performed by a foreign concern, enter the FIPS PUB 10-3 code of the Country of Origin. If more than one foreign country is involved enter the code of the predominant foreign country based on dollar value.

(d) Part D of DD Form 350. The following rules apply to each of the items listed in Part D of DD Form 350:

(1) If Item B9, Foreign Military Sale, is coded Y or if Item B13 is coded 6 or 8, leave all items in this part blank.

(2) If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined in accordance with 219.301-70 and FAR 19.301.

(3) If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction.

(i) If a DD Form 350 report was not submitted because none was required for the original action, enter the code which is applicable to the original contract action governing this transaction.

(ii) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

(4) If Item B13 is coded 7, complete Items D1, D4A, D4B, D4D, D6 and D8 based on information from the agency which awarded the original contract. Complete Items D4C and D4B in accordance with the instructions for that item. Leave all other items in Part D blank.

Item D1, Type of Business.

Code A - Small Disadvantaged Business (SDB). Enter Code A if the award was made to an SDB concern as defined in 219.001 and the place of performance is within the United States and Outlying Areas.

Code B - Other Small Business. Enter Code B if the award was made to a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and Outlying Areas.

Code C - Large Business. Enter Code C if the award was made to a domestic large business concern, and the place of performance is within the United States and Outlying Areas.

Code D - Workshop for the Blind or Severely Handicapped. Enter Code D if the award was made to a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and Outlying Areas.

Code F - Hospital. Enter Code F if the award is made to a hospital, and the place of performance is within the United States and Outlying Areas.

Code L - Foreign Concern/Entity. Enter Code L if the award is made to a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

Code M - Domestic Firm Performing Work Outside the United States. Enter Code M if the award is made to a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and Outlying Areas.

Code N - Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs). Enter Code N for an award to an HBCU/MI as defined at 226.7002 and the place of performance is within the United States and Outlying Areas.

Code P - Other Educational. Enter Code P if award was made to an educational institution not qualifying as an HBCU/MI, and the place of performance is within the United States and Outlying Areas.

Code Z - Other Nonprofit. Enter Code Z if the award was made to a nonprofit or not-for-profit institution, that did not meet any of the above criteria and the place of performance is in the United States and Outlying Areas.

Item D2, Reason Not Awarded to SDB. If Item B13 is coded 7, leave Item D2 blank. If Item D1 above is coded B, or C, enter the appropriate code below. Otherwise, leave this item blank.

Code A - No Known SDB Source. Enter if applicable.

Code B - SDB Not Solicited. Enter this code if there was a known SDB source but it was not solicited.

Code C - SDB Solicited - No Offer. Enter if an SDB was solicited but no offer was received from such concern or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid under this solicitation.

Code D - SDB Solicited - Offer Not Low. Also use this code if the SDB was not willing to accept award of a partial Small Business set-aside portion of an action at the price offered.

Code Z - Other Reason. Report this code when an SDB did not receive the award for any other reason.

Item D3, Reason Not Awarded to Small Business Concern. A Small Disadvantaged Business is included in the term "Small Business Concern". If Item B13 is coded 7, leave this item blank. If Item D1 above was coded C, enter an appropriate code from the available codes below. Otherwise, leave blank.

Code A - No Known Small Business Source. Enter if applicable.

Code B - Small Business Not Solicited. Enter this code if there was a known small business source but it was not solicited.

Code C - Small Business Solicited - No Offer. Enter if a small business concern was solicited, but no offer was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid on under this solicitation.

Code D - Small Business Solicited - Offer Not Low. Enter this code if a small business concern was solicited but the low or most advantageous offer was not from small business. Also enter Code D if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

Code Z - Enter if not awarded to small business for any other reason.

Item D4, Preference Program.

Item D4A - Type of Small Business Set-Aside. For Historically Black Colleges and Universities and Minority Institution set-asides, enter Code A and report in Item D4C below. Enter the appropriate code shown below:

Code A - None. Enter this code if no set-aside preference for small business concerns was given. Enter this code for Historically Black Colleges and Universities and Minority Institution set-asides and report in Item D4C below.

Code B - Total Small Business Set-Aside. Enter this code if total small business set-aside preference was given pursuant to FAR 19.502-2.

Code C - Partial Small Business Set-Aside. Enter this code if partial small business set-aside preference was given pursuant to 219.502-3(S-70) or FAR 19-502-3.

Code D - Combined Small Business/Labor Surplus Area Set-Aside. Enter this code if combined labor surplus and set-aside preference was given pursuant to 219.502-70. The place of performance shown in Item B6 above must be located within a Labor Surplus Area.

Code E - Total Small Disadvantaged Business Set-Aside. Enter this code if this action was totally set-aside for small disadvantaged businesses pursuant to 219.502-72 and complete Item D4B below.

Item D4B - Type of Small Disadvantaged Business Set-Aside/SDB Preference. Enter the appropriate code shown below:

Code A - None. Enter this code if no preference was given.

Code B - Section 8(a) Awards. Enter this code if the contract was awarded to the Small Business Administration (SBA) under Section 8(a) of the Small Business Act pursuant to FAR 19.8.

Code C - Total SDB Set-Aside. Enter this code if the contract was awarded to an SDB firm as a result of SDB set-aside pursuant to 219.502-72.

Code D - SDB Evaluation Preference - Unrestricted. Enter this code if the solicitation was unrestricted but the SDB received an evaluation preference pursuant to 219.7000.

Code E - SDB Preferential Consideration - Partial Small Business Set-Aside. Enter this code if the action was partially set-aside for small business and preferential consideration was given to the SDB pursuant to 219.502-3(S-70).

Item D4C - Type of HBCU or MI Set-Aside Preference. If Item B13 is coded 7, use Code A. Otherwise, enter the appropriate code shown below:

Code A - None. Enter this code if the action was not set-aside for HBCUs or MIs.

Code B - Enter this code if the action was totally set-aside for HBCUs and MIs pursuant to 226.7004.

Code C - Enter this code if the action was partially set-aside for HBCUs or MIs pursuant to 226.7004.

Item D4D - Other Preference Program. Enter the appropriate code below which identifies whether or not additional preference was given in this action. Combined Small Business/Labor Surplus Area Set-Asides are reported in Item D4A above. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code B or C is entered, the entry in Item B6 must be a location which on the date of the initial action was located within a labor surplus area.

Code A - Directed to Workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR 8.7 for an item(s) on the Procurement List.

Code B - Partial Labor Surplus Area Set-Aside. Enter if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures (220.7003).

Code C - Tie Bid Labor Surplus Area Preference. Enter this code if the contract action was awarded to a concern in a labor surplus area and tie bid preference (FAR 14.407-6) was given.

Code Z - None of the Above. Enter this code if no other code in this item applies.

Item D4E, Premium Percent. Complete only if Item D4B is coded C through E or Item D4C is coded B or C. Otherwise, leave blank.

(i) If Item D4B is coded C through E, or Item D4C is coded B or C, enter the applicable premium percentage.

(ii) If Item B13 is coded 1 through 4 or A and a premium percentage was paid for the contract action, enter the premium percentage as a three-digit number calculated in accordance with 219.202-5(b) and rounded to the nearest tenth, (e.g., 7.55% shall be entered as 076).

(iii) If Item B13 is coded 5 or B through G, enter the same percentage as the initial contract action (see 219.202-5(b)).

(iv) If the contract did not result in the payment of a premium, enter three zeros (000).

Item D5 - Ethnic Group. If Item B13 is coded 7, leave this item blank. If the award was made to a small disadvantaged business concern, enter the code below which corresponds to the ethnic group the contractor represented (see representation provision 252.219-7005). Otherwise, leave blank.

Code A - Subcontinent Asian (Asian-Indian) American.
Code B - Asian-Pacific American.
Code C - Black American.
Code D - Hispanic American.
Code E - Native American.
Code F - Other SDB (certified/determined by SBA).
Code Z - No representation.

Item D6, Women-Owned Small Business.

Code N - Enter if the contractor's response to FAR 52.219-3 indicates the firm is not a women-owned small business.

Code Y - Enter if the response to FAR 52.219-3 indicates in the affirmative that the contractor is a women-owned small business.

Code U - Enter if the information is not available because the contractor did not complete the representation under FAR 52.219-3.

Item D7 - Small Business Innovation Research (SBIR) Program (Public Law 97-219). If Item B13 is coded 7, leave this item blank. Otherwise, enter the appropriate code as follows:

Code A - The action is not in support of a Phase I or II SBIR Program.

Code B - The action is related to a Phase I contract in support of the SBIR Program.

Code C - The action is related to a Phase II contract in support of the SBIR Program.

Item D8, Subcontracting Plan for Small Business, Small Disadvantaged Businesses or Historically Black Colleges and Universities or Minority Institutions. Enter the appropriate code as follows:

Code A - Plan Not Included - No Subcontracting Possibilities. Enter if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705-2(c)).

Code B - Plan Not Required. Enter if the subcontracting plan was not required (FAR 19.702(b)).

Code C - Plan Required - No Incentive Provisions. Enter if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

Code D - Plan Required - Includes Incentive Provisions. Enter if the subcontracting plan was required and incentive provisions referenced in 219.708(c)(1) or FAR 19.708(c) were included for subcontracting with small business, small disadvantaged business, historically black colleges and universities, or minority institutions.

(e) Part E, DD Form 350.

Item E1, Contracted Advisory & Assistance Services. Enter the appropriate code below:

Code Y - Enter if the action includes any Contracted Advisory and Assistance Services (CAAS) as defined in FAR 37.2.

Code N - Enter if code Y does not apply.

Items E2 through E8: Reserved.

(f) Part F, DD Form 350.

Item F1, Name of Contracting Officer or Representative. Enter the name (Last, First, MI) of the contracting officer or representative.

Item F2, Signature. Contracting officer or representative.

Item F3, Telephone Number. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

Item F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted.

204.671-6 Instructions for Preparing Magnetic Tape of DD Form 350 Actions, DD-P&L(M)1014. A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the DoD reporting elements specified at 204.671-4(d) to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR-WHS with the agreement of the Departments.

204.672 Monthly Contracting Summary of Actions $25,000 or Less (DD Form 1057).

204.672-1 Scope. This section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671-2. This reporting requirement has been assigned Report Control Symbol: DD-P&L(M) 1015.

204.672-2 Applicability and Coverage.

(a) A DD Form 1057 shall be prepared by each contracting office of the Department of Defense to which a reporting office code has been

assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Subject to the approval of the organizations listed in 204.672-3, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Forms 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to the provisions of Public Law 85-804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Involve orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders for petroleum or petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. These offices shall report the estimated total cost of indefinite delivery contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are orders on GSA stores depots;

(5) Involve Government bills of lading or transportation requests; or,

(6) Are for purchase of land, or rental/lease of real property where the contracting actions were executed by GSA.

(d) Actions and dollars shall be reported as indicated below:

(1) Adjustments. Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "-" preceding the amount to signify a credit entry.

(2) Number of Actions. Enter the number of actions being reported as follows:

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (B) below, each call or order under a blanket purchase agreement, basic ordering agreement, or indefinite delivery contract shall be counted as an action. If it is not possible to determine the price of an order or call when it is placed,

it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as, bread, milk, and ice cream;

(C) Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on electricity and gas contracts for all Naval Shore Establishments.

(3) Dollar Value. All dollar amounts shall be entered in whole dollars. Do not enter cents. If the net amount is a decrease, enter the symbol "-" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

204.672-3 **Due Date and Distribution.**

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices:

(1) Reports shall be submitted in time to reach the recipient within three working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date may be extended by 10 additional calendar days, but the cut-off date must be no later than 30 September.

(2) Letter of transmittal is not required.

(b) Distribution of the DD Form 1057 shall be as follows:

(1) Army contracting offices, including Corps of Engineers Civil Works to:

U.S. Army Contracting Support Agency
Attn: Contract Support Office (SFRD-KS)
Room 1C642, the Pentagon
Washington, DC 20310-0103.

(2) Navy contracting offices as directed by NAVSUP-024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the office indicated in (b)(1) above.

(c) Contracting actions of $25,000 or less which are reportable in accordance with 204.672-2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 **Definitions.** The terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. For the purposes of this subsection, the following terms have the meanings stated below:

"Delivery Orders - GSA Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by GSA.

"Delivery Orders - Other Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by an Agency other than GSA. Orders under DoD or civilian agency indefinite delivery contracts which are not classified as Federal Supply Schedules are to be reported as "delivery orders - all others."

"Delivery Orders - All Other" includes orders under basic ordering agreements, orders under indefinite delivery contracts, and modifications of such orders.

"Other Contracting Actions" includes actions using other procurement methods not reported above, such as large purchases, tasking orders, job orders and modification of such actions.

"Small Purchase Procedures" as defined in FAR Part 13 includes: Purchase Orders; Orders under Blanket Purchase Agreements; Modifications to small purchase actions.

"Tariff or Regulated Industry" means an industry in which rates are fixed or adjusted by a Federal, State or other public regulatory body.

"United States and Outlying Areas" includes American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.672-5 **Instructions for Completion of the DD Form 1057.**

(a) Section A, General Information.

Line A1 - Month Ending. Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1989, enter 890430.

Line A2 - Contracting Office and Mailing Address. Enter sufficient detail to establish the identity of the contracting office submitting the report.

Line A3 - Reporting Office Code. Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(b) Section B, Contracting Actions. The entries for Lines B1 through B7E include new awards and modifications. For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

Line B1 - Tariff or Regulated Acquisitions, Total. Enter on Line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2 - Contract for Foreign Government or International Organization. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor. Also report any actions placed directly with another Federal Agency on this line.

Line B3 - Small Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Small Business concerns and the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B3A - Small Purchase Procedures.
Line B3B - Delivery Orders - GSA Federal Supply Schedules.
Line B3C - Delivery Orders - Other Federal Supply Schedules.
Line B3D - Delivery Orders - All Other.
Line B3E - Other Contracting Actions.

Line B4 - Large Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Large Business concerns and the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B4A - Small Purchase Procedures.
Line B4B - Delivery Orders - GSA Federal Supply Schedules.
Line B4C - Delivery Orders - Other Federal Supply Schedules.
Line B4D - Delivery Orders - All Other.
Line B4E - Other Contracting Actions.

Line B5 - Domestic and Foreign Entities Performing Outside the "United States and Outlying Areas". Enter the total number of actions and total dollar value of actions which were placed with Domestic and Foreign entities and the place of performance was outside the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B5A - Small Purchase Procedures.
Line B5B - Delivery Orders - GSA Federal Supply Schedules.

Line B5C - Delivery Orders - Other Federal Supply Schedules.
Line B5D - Delivery Orders - All Other.
Line B5E - Other Contracting Actions.

Line B6 - Educational, Nonprofit and Other Entities. Enter the the total number of actions and total dollar value of actions which were placed with entities not listed in 204.672-4 such as educational, not-for-profit and nonprofit institutions and the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar
value of actions corresponding to the following subtotals:
Line B6A - Small Purchase Procedures.
Line B6B - Delivery Orders - GSA Federal Supply Schedules.
Line B6C - Delivery Orders - Other Federal Supply Schedules.
Line B6D - Delivery Orders - All Other.
Line B6E - Other Contracting Actions.

Line B7 - Total Contracting Actions. Enter the total number of actions and total dollar value of actions reported in lines B1 through B6 above. Do not include the sublines from B3 through B6 in this total line. If directed by agency procedures, also enter the total number and total dollar value of actions corresponding to the following subtotals:
Line B7A - Small Purchase Procedures.
Line B7B - Delivery Orders - GSA Federal Supply Schedules.
Line B7C - Delivery Orders - Other Federal Supply Schedules.
Line B7D - Delivery Orders - All Other.
Line B7E - Other Contracting Actions.

Line B8 - Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and total dollar value of modification actions. This includes modifications to delivery delivery orders and other contract actions which may be included elsewhere in Part B.

(c) Section C, Extent Competed. (Note: Actions reported in Lines B1 and B2 are not reported in Section C.) Enter the total number of actions and total dollar value of actions in the appropriate category below based on the following criteria:

(1) Line C1 "Competed". Except when the conditions in paragraph (c)(2) apply, use when any of the following conditions apply:

(i) Actions not subject to CICA (see FAR 6.001) where at least two quotations or offers were received;

(ii) Small Business-Small Purchase Set-Asides over $1,000;

(iii) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(iv) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(v) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., UNICOR, Sheltered workshops, Government printing or binding, 8(a) awards, brand name commercial products for authorized resale, or awards to regulated monopolies for utilities are excluded from competition and should be reported on Line C2 below);

(vi) Contract action resulted from a contract awarded competitively prior to CICA (including two-step formal advertising); or

(vii) Delivery orders/modifications under a Federal Supply Schedule.

(2) Line C2 "Not Available For Competition". Use when any of the following conditions apply to the award: (Note: DoD competition reports also include awards to regulated monopolies, FMS awards/International Agreements and actions with another Agency in the category of "Not Available for Competition", but are not reported in Line C2.)

(i) Brand name commercial products for authorized resale;

(ii) Procurements authorized or required by statute to be awarded to a designated source. This includes a contract awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (see FAR 19.8);

(iii) Awards, or modifications thereto, made pursuant to FAR 13.106(a) Purchases not over $1,000; or

(iv) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

(3) Line C3 "Not Competed". Complete when Lines C1 or C2 do not apply.

Line C1 - Competed, Total. Enter the total number of actions and total dollar value of actions which were competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C1A - Small Business Concerns.

Line C1B - Large Business Concerns.

Line C1C - Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line C1D - Educational, Nonprofit and Other Entities.

Line C2 - Not Available for Competition, Total. Enter the total number of actions and total dollar value of actions which were not available for competition. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C2A - Small Business Concerns.

Line C2B - Large Business Concerns.

Line C2C - Domestic or Foreign Entities Performing Outside the "United States and Outlying Areas".

Line C2D - Educational, Nonprofit and Other Entities.

Line C3 - Not Competed, Total. Enter the total number of actions and total dollar value of actions which were not competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C3A - Small Business Concerns.

Line C3B - Large Business Concerns.

Line C3C - Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line C3D - Educational Institutions, Nonprofit and Other Entities.

(d) Section D, Research, Development, Test and Evaluation Actions. Enter the number and dollar value of actions for research, development, test and evaluation work on the Lines D1 through D5 as appropriate. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

Line D1 - RDT&E Awarded to Small Business Concerns

Line D2 -RDT&E Awarded to Large Business Concerns.

Line D3 - RDT&E Awarded to Domestic or Foreign Entities Performing Outside the "United States and Outlying Areas".

Line D4 - RDT&E Awarded to Historically Black Colleges and Universities or Minority Institutions.

Line D5 - RDT&E Awarded to Other Entities. Enter awards to other entities such as educational, nonprofit or not-for-profit institutions which were not reportable above.

(e) Section E, Selected Socioeconomic Statistics. Enter the total number of actions and total dollar value of actions on the appropriate lines below:

Line E1 - Small Business Set-Aside Actions. Enter the total number of actions and total dollar value which were small business set-aside actions. Also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line E1A - Small Business-Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105.

Line E1B - Small Business Set-Asides. Enter actions pursuant to FAR 19.502, as supplemented.

Line E1C - Combined Small Business/Labor Surplus Area Set-Asides. Enter actions pursuant to 219.502-70.

Line E2 - Small Disadvantaged Business Actions. Enter the total number of actions and total dollar value which were small disadvantaged business actions. Also enter the total number of actions and total dollar value associated with each of the SDB categories shown below:

Line E2A - Section 8(a). Enter actions with the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (FAR 19.8).

Line E2B - SDB Set-Aside or SDB Preference. Enter actions resulting from Total Small Disadvantaged Business Set-Aside pursuant to 219.502-72 or actions resulting from application of an SDB evaluation preference (see 219.7002); or SDB preferential consideration (see 219.502-3(S-70)).

Line E2C - Small Business-Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105 where award is to an SDB without the application of a preference.

Line E2D - Small Business Set-Aside. Enter actions pursuant to FAR 19.502, without a preference or preferential consideration to an SDB, but where the award is to an SDB.

Line E2E - Other awards made to SDB concerns.

Line E3 - Women-Owned Small Business. Enter total actions and total dollars made to women-owned small businesses.

Line E4 - Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs). Enter the total actions and total dollars made to an HBCU/MI pursuant to 226.7004.

Line E5 - Sheltered Workshop. Enter total actions and total dollars made to a workshop for the blind or a workshop for the severely handicapped from the procurement list pursuant to FAR 8.7.

Line E6 - Labor Surplus Area Set-Aside. Enter total actions and dollars made pursuant to 220.7003 or FAR 20.2. Do not include awards reported in Line E2C as a combined small business/labor surplus area set-aside.

(f) Section F - Small Purchase Procedures - Dollar Value Ranges. Enter the total number of small purchase procedure actions and total dollar value in the appropriate category shown below.

Line F1 - $0.01 - 1,000.00.
Line F2 - $1,000.01 - 2,500.00.
Line F3 - $2,500.01 - 10,000.00.
Line F4 - $10,000.01 - 25,000.00.

(g) Section G - Remarks and Authentications.

Line G1 - Remarks. Enter any remarks applicable to this report.

Line G2 - Contracting Officer.

Line G2A - Contracting Officer's Name. Enter the typed name (Last, First, Middle Initial) of the contracting officer or duly authorized representative.

Line G2B - Contracting Officer's Signature. Enter the signature of the person identified in line G2A above.

Line G2C - Telephone Number. Enter the telephone number (and area code) of the person identified in line G2A above.

Line G3 - Date Report Submitted. Enter the date submitted as year, month and day in 2-digit numeric segments (YYMMDD). For example, enter 2 January 1999 as 990102.

204.672-6 Instructions for Preparing Magnetic Tape of DD Form 1057 Actions, DD-P&L(M)1015. A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the magnetic tape are developed by DIOR-WHS with the agreement of the Departments.

204.673 Record of Weighted Guidelines Method Application (DD Form 1547).

204.673-1 Purpose. The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates" (see 215.970). The management information system is extensively used within the Office of the Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all Branches of the Government, Congress, and the public.

204.673-2 Responsibilities. The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any erorrs detected by the system's auditing processes.

204.673-3 Applicability. For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions valued $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) Army: Contracting officers from all field contracting offices shall forward completed DD Forms 1547 directly to the Office of the Assistant Secretary for Research, Development and Acquisition (SARD-KS), Washington, DC 20310-0600 or through intermediate office shown below:

(1) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP-SC, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001; and

(2) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN-PRP), Washington, DC 20314-1000.

(b) Navy:

(1) Contracting officers from the contracting offices specified below and all subordinate field offices shall forward completed DD Forms 1547 to the office designated in (b)(2):

(i) Naval Air Systems Command;
(ii) Naval Sea Systems Command;
(iii) Space and Naval Warfare Systems Command;
(iv) Naval Facilities Engineering Command;
(v) Naval Supply Systems Command;
(vi) Office of Naval Research;
(vii) Headquarters, United States Marine Corps; and
(viii) Strategic Systems Project Office.

(2) Designated Office: Commander, Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) Air Force:

(1) Contracting officers from all field contracting offices in the Air Force Systems Command and Air Force Logistics Command shall forward completed DD Forms 1547 to HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

204.673-4 Procedures.

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970-2, 215.971-3, and 215.972-2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system on profit. The designated office will perform the necessry audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this part have been assigned RCS: P&L(Q) 1751.

204.674 Overseas Distribution of Defense Subcontracts (DD Form 2139).

204.674-1 Definition.

"Country of Origin", as used in this section, means the country where the actual producer of supplies or provider of services is located.

204.674-2 Purpose. To assist DoD monitoring of the volume, type, and nature of subcontracts with foreign sources the clause at 252.204-7005 requires prime contractors and first-tier subcontractors to report (using DD Form 2139) those subcontracts or modifications thereof exceeding $25,000 where the country of origin is outside the United States, its territories and possessions.

204.674-3 Contract Clause. The contracting officer shall insert the clause at 252.204-7005, Overseas Distribution of Defense Subcontracts in any contract for other than commercial items which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to the modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

204.804-4 Physically Completed Contracts.

(a)(S-70) Interim Contract Completion Statement (Notice of Physical Completion). This notice will be used when the contract is administered by an office other than the purchasing office. When a contract, other than a small purchase, is physically completed and accepted, the Contract Administration Office (CAO) with primary contract administration responsibility will forward a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9 (Contract Physical Completion), to the purchasing office. When the DD Form 1594 is used as a notification of physical completion, Block 8, Remarks, will be annotated "Notice of Physical Completion". Block 8 will also contain the final acceptance date and the typed name and signature of a responsible official, and the date signed. Blocks 9b, 9c, and 9d of the DD Form 1594 will be left blank. This notification will be used to begin the contract closeout procedures specified in FAR 4.804-5.

(b) Status of Physically Completed Unclosed Contracts. Contract Administration Offices shall advise the appropriate procuring contracting officers within 15 days after the end of the month following the month in which a physically completed contract has not been closed within the time periods specified in FAR 4.804-1. This advice shall include the reasons for the delay, and the target date which has been set for closing. If the contract is not closed by the target date specified, the contract administration office shall, unless information is requested earlier by the PCO, advise the PCO of the reasons for the further delay and the new target date. MILSCAP Format Identifier PKX, Unclosed Contract Status, shall be used to provide this advice to the PCO when MILSCAP procedures apply.

204.804-5 Detailed Procedures for Closing Out Contract Files.

(a)(S-70) When Purchasing Office Administers the Contract. When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check-List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, Contract Completion Statement, for all contracts in excess of the small purchase threshold (see FAR 13.000). The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of the small purchase threshold, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804-70(a)(2).

(a)(S-71) When Purchasing Office Does Not Administer the Contract. When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see 204.804-5(b)(3)) shall insure that all actions required of the Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in 204.804-70(a)(2). The date in Item 9d of DD Form 1594, or Columns 59-65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59-65 of the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format Identifier PKZ, Contract Closeout Extension.

(b) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action. The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed or has been terminated completely:

(1) Provide the purchasing office with an interim contract completion statement (See 204.804-4(a)(S-70)). Upon receipt of the notice of physical completion, the PCO should inform the ACO of any impending actions which may cause delays in the closeout procedures.

(2) Prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished.

(3) If appropriate, initiate DD Form 1593, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when closeout actions may be complex and extensive or when offices are at different locations).

(4) Upon determination of final completion (including final payment), process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file).

(5) Retain one copy of the completed form, which is authority for closing out the contract administration file.

204.804-70 Review, Separation, and Retirement of Completed Contract Files.

(a) Upon determination of contract completion under the procedures outlined in FAR 4.804 and 204.804 above, each office shall review all files pertaining to the individual contract as described below. For disposal criteria, see FAR 4.805.

(1) Duplicate or Working Contract Case File--remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) Official Contract Case File--remove folder for completed contract from the active file series, mark each folder or folder tab "Completed (Date)" and place them in completed (inactive) cross-reference/locator file series; separate series should be established for contracts under the small purchase threshold (see FAR 13.000) to facilitate later disposal.

(3) Cross Reference/Locater Files--remove any contract cross-reference data forms relating to the completed contract, mark each "Completed (Date)" and place them in completed (inactive) cross-reference/locator file series for later disposal.

(b) Review of Contractor General Files. Each office shall review contractor general files at least once annually and--

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized.

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal and immediately dispose of routine documents as authorized.

(c) Retirement of Completed Files. Completed files series shall be cut off at least annually, and new series begun to facilitate destruction in blocks--normally annual blocks. The cut-off series shall be held in the office maintaining the records for an additional period not to exceed one year and then stored locally in record-

holding or staging areas, if available, until they are eligible for destruction (see FAR 4.805); when such space is not available, the files shall then be transferred to the General Services Administration Federal Records Center servicing the area. Completed cross reference/locator files shall be held locally until eligible for destruction.

204.805-70 **Disposal of Duplicate or Working Contract or Contractor Files.** Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see FAR 15.804-2), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross-referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

204.805-71 **Disposal of Contract Cross Reference/Locator Files.** Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are no longer required as contract cross-reference/locator.

Expiration Date	Schedule Identification	FSC Class	Schedule Title	Remarks
03/01/89	99 VI A	9910	TROPHIES AND AWARDS - trophies, awards, plaques, pins, and ribbons	
05/01/89	99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

208.404-71 Establishment or Revision of Federal Supply Schedules Mandatory Upon DoD.

(a) Policy. The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where--

(1) the item is a part or accessory incidental to a basic item;

(2) the item is a component of a unit assembly;

(3) the item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) the item involves a contract for services.

(b) Procedures. Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Contracting, Defense Logistics Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of 35 days for consideration should be anticipated. These proposals will be

distributed to the representatives of the Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Manpower, Installations and Logistics) for resolution.

208.405 Ordering Office Responsibilities.

208.405-1 Ordering from Multiple-Award Schedules.

(c) When purchase of an item of foreign origin is specifically required, the using activity shall furnish the contracting activity sufficient information to permit the determination required by FAR Part 25 to be made.

208.405-2 Order Placement.

DD Form 1155 is authorized for use to place orders against Federal Supply Schedules.

(S-70) Oral Orders.

(1) General. Contracting offices are authorized to make acquisitions not in excess of the small purchase threshold established in FAR Part 13 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order the contractor will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) contract number;
(ii) order number under the contract;
(iii) date of order;
(iv) name and title of the person placing order;
(v) itemized listing of supplies or services furnished; and
(vi) date of delivery or shipment.

(2) Payment. Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

PART 213--SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES
SUBPART 213.4--IMPREST FUND

213.402 General.

(a) Authority. Commanders of installations and of activities with contracting authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum, and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible. Additional guidance on imprest funds is contained in DoD Instruction 5100.71, Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds.

(b) Imprest Fund Cashiers.

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, e.g., in "Central Receiving." Disbursing officers and individuals responsible for originating, approving and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) name of individual and duty station;

(ii) identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) specific duties to be performed;

(iv) effective date; and

(v) amount and location of fund.

Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity contracting office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to

alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

213.404 Conditions for Use.

(a) Imprest funds may also be used for small purchases when:

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination.

(2) The purchase does not require detailed technical specifications or technical inspection.

(3) The purchase is for overseas transactions up to $2,500 in support of contingencies declared by the Secretary of Defense.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery, provided the charges are determined to be reasonable and acceptance is in the best interest of the Government.

(2) C.O.D. charges for supplies ordered for payment from imprest funds.

(3) Civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages;

(2) Advances, other than those authorized in 213.402;

(3) Cashing of checks or other negotiable instruments.

213.405 Procedures.

(a) Receipt of Material.

(1) All material purchased through the imprest fund shall be

delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash--Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348-1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certification of receipt and acceptance of material shall be obtained on one of the documents as indicated in (1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangement for pick up of material is not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) Advance of Funds. Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances, cash may be advanced for longer periods.

(c) Certification of Cash Payment. The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full.

(2) Amount paid.

(3) Date of payment.

(4) Signature and title of supplier or supplier's agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(d) Responsibilities of Imprest Fund Cashier.

(1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered

for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standard Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents, nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(e) Payments.

(1) C.O.D. Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or supplier's agent and obtain the certification of cash payment as set forth in 213.405(d)(1).

(2) Receipt From Common Carrier or Post Office. When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales documents, if available.

(3) Periodic Payments. When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by FAR 13.404.

(4) Failure to Ship C.O.D. When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver,

PART 213--SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES
SUBPART 213.5--PURCHASE ORDERS

213.502 Unpriced Purchase Orders.

(c) Unpriced purchase orders may be issued by using DD Form 1155.

213.503 Obtaining Contractor Acceptance and Modifying Purchase Orders.

(b)(1) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

(d)(1) Modifications making administrative changes such as the correction of typographical errors, changes in paying office, and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(2) To modify a purchase order prior to commencement of performance and within the scope of the original order, a unilateral modification may be issued on a Standard Form 30. The modification may not be unilaterally issued unless:

(i) The modification reflects the contractor's written or oral confirmation of the proposed revision(s). Unilateral modifications may include withdrawal of all or part of the original purchase order.

(ii) Block 13A. of the Standard Form 30 is annotated to reflect the issuance of an authorized unilateral modification.

(S-70) To otherwise modify the purchase order, and if not previously included in the purchase order, the clauses set forth at 213.507(a)(2) shall be incorporated in the SF 30 and the contractor's acceptance obtained by signature on the SF 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property clause, shall require contractor acceptance by signature on the Standard Form 30.

213.505 Purchase Order and Related Forms.

213.505-2 Agency Order Forms in Lieu of Optional Forms 347 and 348.

(S-70) Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small and other simplified, unclassified purchases made pursuant to FAR Part 13 and this supplement. (For classified purchases see 213.507(a)(4).) The DD Form 1155, when used in concert with the applicable clause requirements at 213.507(a)(1) through (4), provides in one document:

(i) a purchase order, a blanket purchase agreement, a delivery order under a contract or a delivery order on Government agencies outside the Department of Defense;
(ii) a receiving and inspection report;
(iii) a property voucher;
(iv) a public voucher:
(A) not exceeding $25,000 when the form is used as a purchase order;
(B) without monetary limitation when the form is used as a delivery order; and
(C) without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established;
(v) a document for acceptance by the supplier.
(2) Optional Form 336, Continuation Sheet, provides additional space, or a blank sheet of paper may be used. (SF-36 may be used until stocks are exhausted.)
(3) DD Form 1155c-1, Commissary Continuation Sheet, (for use on an optional basis), provides columns suited for commissary procurements.
(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used for all modifications to DD Form 1155 (see 213.503).
(5) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence".
(6) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed (including computer generated). Continuation sheets may be printed on the reverse of DD Form 1155.

213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.
(b)(1) The $2,500 limitation applies to all purchases except for--
(i) aviation fuel and oil purchases which will not exceed $10,000; and
(ii) overseas transactions by warranted contracting officers up to $25,000 in support of contingencies declared by the Secretary of Defense.

213.505-70 Instructions for Entries on DD Form 1155 and Optional Form 336.
(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (1) to DCAS, or (2) to a non-DCAS office listed in the DoD Directory of Contract Administration Services Components and the contractor is located in the continental United States or Canada.
(b) The organizational entity codes (address codes) referenced throughout Part 213 are as follows:

PART 215--CONTRACTING BY NEGOTIATION
SUBPART 215.6--SOURCE SELECTION

215.607 Disclosure of Mistakes Before Award.

(c)(3) Authority to make the determination is delegated to the head of the contracting activity with authority to redelegate to the chief of the contracting office.

215.608 Proposal Evaluation.

(a)(1) See also 215.805-70 regarding use of cost realism analysis.

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(S-70) When a procurement is subject to acquisition streamlining, the contracting officer may want to include in the solicitation evaluation criteria on cost-performance trade-offs, application/tailoring recommendations, and cost-effectiveness of the proposed technical approach.

215.611 Best and Final Offers.

(c)(S-70) Second or subsequent requests for best and final offers require close monitoring and control at appropriate management levels in order to avoid auction techniques, enhance protection of source selection sensitive data, and ensure that contracts are awarded fairly and promptly. Unavoidable changes in requirements or funding or other compelling reasons may require a second or subsequent request for best and final offers; however, these circumstances should seldom occur when proper planning and review is accomplished before the initial request for best and final offers. Each request for second or subsequent best and final offers shall be approved before the request is issued, as follows:

(i) For competitive negotiated acquisitions under formal source selection (see FAR 15.612(a)), by the Source Selection Authority (SSA) and the Service Acquisition Executive (SAE). The SAE may delegate this authority to a level no lower than the Head of the Contracting Activity (HCA).

(ii) For all other competitive negotiated acquisitions, by the HCA. The HCA may delegate this authority to a level no lower than the chief of the contracting office.

(c)(S-71) Each HCA shall establish a system for reporting and documenting second or subsequent requests for best and final offers, which shall as a minimum include--

(i) The total number of competitive negotiated acquisitions awarded;

(ii) The number of those acquisitions for which a second or subsequent request for best and final offers was approved and issued; and

(iii) The reasons for approving each second and subsequent request for best and final offers.

(c)(S-72) Each HCA shall periodically examine the data collected and recorded under 215.611(c)(S-71), analyze trends, and take any necessary action to provide training, revise approval levels or otherwise ensure that second or subsequent requests for best and final offers are used only when clearly necessary and unavoidable. The HCA shall provide summary reports to the SAE as specified in departmental procedures.

215.613 Alternative Source Selection Procedures. "Four-Step" Source Selection Procedures are as follows:

(a) General.

(1) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(2) In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(3) These procedures are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(4) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/price proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(5) At the completion of technical and cost price discussions, a common cut-off date for the receipt of final technical and cost/price

PART 215--CONTRACTING BY NEGOTIATION
SUBPART 215.8--PRICE NEGOTIATION

215.801 Definitions.

"Cost realism analysis", as used in this subpart, means a review of the cost position of an offeror's proposals to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, or if the costs are consistent with the various elements of the technical proposal.

215.802 Policy.

(b)(2) (This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.)

215.803 General.

(b) When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

215.804 Cost or Pricing Data.

215.804-1 General.

(a) Partial or limited data may be requested when less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result on awards under $100,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which the contracting officer considers adequate to support the limited extent of the cost analysis required.

215.804-2 Requiring Certified Cost or Pricing Data.

(a)(1)(ii) The term "price adjustment" or "pricing adjustment" means the aggregate increases and/or decreases in costs plus applicable profits.

(b)(1) Cost or pricing data shall not be required merely in anticipation of postaward review of the contract.

215.804-3 Exemptions from or Waiver of Submission of Certified Cost or Pricing Data.

(a)(1)(i) When there is a reasonable expectation that adequate

price competition will result on a particular procurement, the contracting officer should rarely have a need to require the submission or certification of cost or pricing data regardless of the type of contract. Unnecessarily requiring the submission of cost or pricing data is not in the best interest of the Government because it leads to increased proposal preparation costs, extends procurement leadtime, and wastes both contractor and Government resources.

(ii) When economic price adjustment provisions are included in competitive acquisitions, see FAR 16.203-2(b).

(a)(S-70) The Department of Defense has waived the following requirements with respect to cost or pricing data and certification thereof:

(i) Certification, but not submission of, cost or pricing data for cost-reimbursement-no-fee prime and subcontracts with nonprofit educational institutions and other nonprofit organizations. However, subcontractors other than nonprofit educational institutions and other nonprofit organizations are still subject to the certification requirements and the contracting officer will require, by appropriate contractual provision, subcontractor compliance with certification requirements.

(ii) Submission or certification of cost or pricing data from the Canadian Commercial Corporation and its subcontractors.

(b)(1) Adequate price competition may exist for any contract including cost-reimbursement contracts, even though price is not the primary factor in the evaluation of proposals, provided that price is a substantial factor in the source selection criteria.

(2) If, after receipt of proposals, it is determined that adequate price competition does not exist, then cost or pricing data shall be obtained and certified as required (see FAR 15.804-2).

(b)(2)(ii) An example of a determinative advantage is where substantial costs, such as start-up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position.

(3) Examples of a price "based on" adequate price competition are: (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with FAR 17.207(d); and (ii) an item normally is acquired competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.

(b)(S-70) Adequate Price Competition in Dual Source Programs.

(i) In the case of dual source programs, adequate price competition normally exists when prices are solicited across a full range of step quantities, normally including a 0-100 per cent split from at least two offerors who are individually capable of producing the full quantity, and

(A) the award is made to the offeror with the lowest evaluated price;

(B) when the award is split, if the combined price of both awards is the lowest evaluated price in the range of offers submitted; or

(C) when the combined price of both awards is not the lowest evaluated price in the range of offers submitted, if the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(ii) The procedures in paragraph (b)(S-70)(i) above may also be used in multiple source acquisitions, including those for the mobilization base.

(c)(6) In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being acquired and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two.

(e)(3) In anticipation of repetitive acquisitions of a catalog item, the contracting officer or the cognizant ACO may make special arrangements for submission of the exemption claim. The submission need not be on a Standard Form 1412, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government contracting offices with their concurrence.

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306(a)(5), and for waiving the inclusion of the required clauses. The format may be used also for the D&Fs for such waiver made by the Head of the Contracting Activity for contracts with foreign governments or agencies thereof.

(Military Department or Agency)
Determination and Findings
Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head ____(1)____, the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C. 2306(a)(5), as implemented by FAR 15.804-3(i).

Findings

1. The ____(2)____ proposes to enter into a contract with ____(3)____ for the acquisition of ____(4)____.
2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: ____(5)____.

Determination

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date_____ _____

NOTES: (1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a contracting activity."
(2) Contracting activity.
(3) Name of supplier.
(4) Brief description of supplies or services.
(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e. limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

215.804-6 Procedural Requirements.

(b)(2) The following may be used with the SF 1411:

(i) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921-1 to support the SF 1411. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army - AMCP 715-8, Navy - OASN(S&L), CBM-CPR, and Air Force - AFLCP/AFSCP 800-15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921-1.

(ii) Contract Pricing Proposal Supporting Schedules may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

(c) To the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of

that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the acquisition.

(e) The referral to higher authority shall also include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost or pricing data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and (3) any assurances offered, such as agreements to adequately safeguard information furnished.

(f) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future acquisitions, it is important to know whether the offeror intends to absorb any portion of these costs or whether the offeror plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on acquisitions (including spare parts or other support items).

(g)(3) In addition to submitting cost or pricing data from the prospective subcontractor most likely to be awarded the subcontract, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract.

215.804-7 Defective Cost or Pricing Data.

(b)(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(d) An auditor's advisory report of postaward reviews of cost and pricing data may result either from a specific request of a contracting officer or from audit action initiated independent of a contracting officer's request.

(e) In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(e)(S-70) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter contract. In such cases, the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing data submitted by the prime contractor proved to be defective.

(e)(S-71) The Government and the prime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support the subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(ii) the prime contract price was increased by a significant sum because of such defective subcontractor data.

(f) Conditions may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), DCBM, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF (AF/RDC), for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency.

(2) Although the action is taken under those price reduction clauses rather than under Part 231 as a practical matter the result is the same, i.e., the increased costs will be disallowed under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) of 215.804-7(e) above.

215.804-8 Contract Clauses. The requirement for inclusion of the specified clauses in contracts with foreign governments or agencies

may be waived in exceptional cases by the Agency head (see FAR 15.804-3(i)). The contracting officer shall also include the clause at FAR 52.215-22 when obtaining partial cost or pricing data in accordance with 215.804-2(a)(2).

(S-70) The clause at 252.215-7000, Aggregate Pricing Adjustment, shall be included in all solicitations and contracts which include a clause at FAR 52.215-23, FAR 52.215-24, or at FAR 52.215-25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

215.805 Proposal Analysis.

215.805-1 General.

(b) See also 215.805-70 regarding use of cost realism analysis.

215.805-2 Price Analysis.

(b) To provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior acquisitions, specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency. It must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered.

215.805-4 Technical Analysis. Technical analyses by the Plant Rep/ACO and the team members shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make-or-buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

215.805-5 Field Pricing Support.

(a)(1) Contracting officers shall request field pricing reports for contracts and modifications resulting from a proposal in excess of $500,000 for a fixed-price type contract and $1 million for a cost type contract. The requirement for subject reports may be waived, with adequate written justification by the contracting officer. However, if the contracting officer becomes aware that the cognizant administrative contracting officer has found a significant deficiency in the contractor's estimating system and has instructed the contractor to correct the deficiency, field pricing reports shall be requested for fixed-price proposals in excess of $250,000 and cost type proposals in excess of $500,000. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price is achieved. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from

the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements--labor hours, material costs, etc.--to which the rates apply.

(2) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the contracting officer. To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of the auditor's workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the contracting officer and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the contracting officer);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(c)(1)(S-70) When field pricing reviews are required, contracting officers should note the following:

(A) The Plant Representative/Administrative Contracting Officer (Plant Rep/ACO) is the team manager for all contracting officer requests for field pricing support. The contracting officer shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Rep for the Services and the ACO for DCAS(DLA). An advance copy of the contracting officer's request shall also be sent to the cognizant audit activity. When only an audit report is requested by the contracting officer, the auditor shall treat the advance copy of the contracting officer's request as a signal to begin the audit work. When an audit is completed, the audit activity shall: (1) send the original of the audit report to the Plant Rep/ACO, and (2) send an

advance copy of the audit report to the contracting officer. To expedite the pricing review process, these requests shall be marked in bold letters on the mailing envelope **"FIELD PRICING REQUEST."** On urgent requests, provide facsimile numbers in the requests to facilitate sending the complete report.

(B) When the contracting officer knows in advance that field pricing support will be required, the contracting officer shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. If the contracting officer requires the contractor to provide copies of the proposal directly to the Plant Rep/ACO and auditor, a field pricing request shall be issued along with the solicitation. In this event, the contracting officer shall include in the field pricing request, the approximate date the proposal will be provided by the contractor, and identify those specific areas for which field pricing support is required.

(C) Where audit reports are received on contracting actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(c)(1)(S-71) When field pricing reports are requested for acquisition of parts or support equipment, the reports shall as a minimum include, but will normally be limited to, the following:

(A) A detailed analysis of each line item where the quoted price exceeds by 25 percent or more the lowest price to the Government of the item at any time within the most recent 12-month period. These items will be specified in the request for field pricing support.

(B) The results of a review of the description and the price of each line item in the proposal made to assist in identifying any obvious overpricing. Those items, so identified, will be subjected to further analysis.

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items (i.e., the majority of line items are of approximate equal value), a random sampling technique should be used.

(D) An analysis of a random sample of the remaining low-dollar-value line items. Sample size may be determined by subjective judgment, e.g., experience with the contractor, reliability of contractor's estimating/accounting systems, credibility of proposals, etc.

(c)(1)(S-72) When field pricing reports are to be requested for spare parts proposals that have been identified as Spares Acquisition integrated with Production (SAIP) items (see DoD Instruction 4245.12), the contracting officer shall--

(A) Include a copy of the data entitled "Contractor's Procurement Schedule for SAIP" (Data Item DI-V-7200), or equivalent, in the request so that the benefits of combining new and in-process quantities can be assured (this data is delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include this data in its proposal.

(d) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the contracting officer's final pricing decision. Therefore, it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render services within the individual area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information the auditor can often project trend data. The technical specialist may also analyze the proposed hours on the basis of knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(e) The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor. The contract auditor is responsible for submission of information and advice, based on analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs.

(e)(6) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in the submission to the contracting officer. If technical analyses are received later by the auditor, the auditor shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(e)(7) When the contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, the contracting officer shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved.

(e)(8) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the contracting officer transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility.

(i) If in the opinion of the contracting officer, Plant Rep/ACO, or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), such reviews should be fully coordinated with the Plant Rep/ACO having cognizance of the prime contractor before being initiated. If a review is required of a subcontract proposal, the prime Plant Rep/ACO shall forward the request to the subcontract ACO with an information copy to the subcontract auditor. In the event a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the Plant Rep/ACO's at higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract Plant Rep/ACO to the prime Plant Rep/ACO with an information copy to the prime auditor. If the review is of a lower tier subcontract proposal, the report shall be transmitted through the Plant Rep/ACO's in the subcontract chain.

(j) The appropriate contract administration activities will be notified by the HCA when review and evaluation of subcontractors' proposals will require extensive field pricing assistance in

connection with the acquisition of a major new weapon system, or require special or expedited action by field pricing personnel and such action is being, or has been, delayed.

215.805-70 Cost Realism Analysis.

(a) Even when adequate price competition exists, it may be appropriate to perform a cost realism analysis (see 215.801) to ensure that there is a reasonable expectation that the proposed costs are consistent with the technical proposal, especially for cost-reimbursement contracts. Cost realism analysis should also be used when the solicitation contains new requirements that may not be fully understood by competing contractors; when there are quality concerns; or when past experience has indicated that contractors have proposed costs which have resulted in quality or service shortfalls.

(b) Information necessary to perform a cost realism analysis should be determined during procurement planning and development of the solicitation based upon the circumstances of the particular procurement. There are instances where there may be information available from Government sources to perform a cost realism analysis; in other instances information will have to be obtained from the offerors. In the latter case, the contracting officer shall request only those data necessary to perform the cost realism analysis, not the submission or certification of cost or pricing data.

215.806 Subcontract Pricing Considerations.

(S-70) Other subcontract pricing considerations include:

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(3) Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with FAR 15.7 and with FAR Part 44. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) the prime contractor's purchasing practices; and

(ii) the principal components to be subcontracted and the prospective or actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (SF 1411),

(C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent of subcontract supervision.

(4) The contracting officer is responsible for the reasonableness of the prime contract price which includes self-satisfaction as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the contracting officer and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support from the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 215.805-5.

(5) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(6) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a statement substantially as follows:

> Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon,

notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.
(List Subcontracts)

(7) In considering cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations identified in 215.903(d).

(8) The prime contractor may submit subcontractor claims for exemption at any time to the contracting officer for an advance review of their acceptability, but otherwise the prime contractor shall submit them with its proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

215.807 Prenegotiation Objectives.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, will be documented and reviewed in accordance with Departmental procedures. The contracting officer shall consider data resulting from the application of work measurement systems in the development of pricing objectives and negotiations.

(S-70) When contract audit review of the offeror's proposal has been requested, the contracting officer shall keep the auditor informed of planned prenegotiation and negotiation activities, including related fact-finding sessions and/or discussions with the offeror, and invite contract audit participation where the contracting officer and auditor agree that a significant contribution can be made.

215.808 Price Negotiation Memorandum.

(a)(4) Comments should also be included on the current status of their contractor systems (e.g., estimating, accounting, compensation, etc.) to the extent that they impacted and were considered in the negotiation.

(a)(9) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(a)(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's pre-negotiation evaluation of the total estimated profit under the

proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(ii) When the weighted guidelines method is not used because of unusual pricing situations (see 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see 215.9) may be used in the Price Negotiation Memorandum, Provided that the rationale used in assigning the various rates is fully documented.

(iv) See also FAR 15.807(c).

215.809 Forward Pricing Rate Agreements.

(e) Indirect costs commonly known as overhead are defined and described in FAR 31.203. Criteria for treatment and application of indirect costs to contracts are also set forth in FAR 31.203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited indirect cost data or negotiated indirect cost rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of the contracting activity, seek preferential indirect cost rates. If there is any question with respect to audited indirect cost data or negotiated indirect cost rates, or if such are not available, the negotiator should normally use the advisory services of the cognizant Department of Defense auditor.

(e)(2) In assessing changed conditions, the ACO will consider: (i) the type of contract contemplated; (ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (iv) any new data or other information that may raise a question as to the acceptability of the rates.

(f) When contracting representatives have received notice that changed conditions negate FPRA's, individual contracting actions should not be delayed.

215.810 **Should-Cost Analysis.**

(b)(S-70)(i) Should-cost analyses shall be performed prior to award of definitive major systems contracts in excess of $100 million for major systems if each of the following conditions are met:

(A) a production contract for the system is to be awarded on a sole-source basis;

(B) initial production of the system has already taken place;

(C) the current plans for the Department of Defense include production of substantial quantities of identical or similar items;

(D) the work to be performed under the contract is sufficiently defined to permit an effective analysis of what production of the system by the contractor should cost; and

(E) major changes in the program are unlikely.

(ii) After an initial should-cost analysis has been performed under (i) above, subsequent should-cost analyses need not be performed annually, but must be accomplished at least every four years on contracts meeting the requirements of (i) above.

(iii) Waiver of a should-cost analysis shall be made in accordance with Service procedures, but in no event at a level lower than a general/flag officer or civilian equivalent.

(e) The content of the should-cost analysis team report shall be prescribed by Service procedure. Team leaders should ensure that activities are coordinated to avoid duplication of effort.

215.811 **Estimating Systems.** The coverage in subsections 215.811-70 through 215.811-79 below and the clause at 252.215-7003 provides, for the convenience of DoD activities, a consistent but more detailed and comprehensive treatment of estimating system policies and procedures than FAR 15.811.

215.811-70 **Definitions.**

"Contractor", for purposes of this section, means a business unit as defined in FAR 30.102.

"Estimating System" is a term used to describe a contractor's policies, procedures and practices for generating cost estimates which forecast costs based on information that is available at the time. It includes the organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; flow of work, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and analyses used by a contractor to generate estimates of costs and other data included in proposals submitted in the expectation of receiving contract awards.

"Significant Estimating System Deficiency" means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for either total cost or a major cost element which is not an acceptable basis for negotiation of fair and reasonable prices.

215.811-71 Policy. It is the policy of the DoD that all contractors have estimating systems that consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices. An estimating system should be consistent with and integrated with the contractor's related management systems, and should be subject to applicable financial control systems.

215.811-72 Applicability.

(a) The specific requirements of subsections 215.811-75 to 215.811-78 and paragraphs (d) and (e) of the clause at 252.215-7003, Cost Estimating System Requirements, apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more for which certified cost or pricing data were required.

(b) For a large business contractor not meeting the criteria in (a) above but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10 million or more for which certified cost or pricing data were required, the PCO may require disclosure and review in accordance with subsections 215.811-75 to 215.811-78 and in compliance with paragraphs (d) and (e) of the clause at 252.215-7003 with the concurrence or at the request of the ACO when such compliance is in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly to the Government).

(c) The disclosure, maintenance and review requirements of subsections 215.811-75 to 215.811-78 do not apply to small businesses or to educational institutions or other nonprofit organizations.

215.811-73 Responsibilities.

(a) For a contractor meeting the requirements in 215.811-72(a) or (b) above, the cognizant ACO shall determine the adequacy of the contractor's estimating system and pursue appropriate corrections of deficiencies.

(b) On behalf of the ACO, the cognizant auditor is responsible for being the team leader in conducting estimating system reviews.

215.811-74 Contractor Estimating System Standard. To be considered adequate, a contractor's estimating system must be established, maintained, reliable, consistently applied, and must produce verifiable, supportable and documented cost estimates.

215.811-75 System Disclosure and Maintenance Requirements.

(a) An estimating system disclosure is adequate when the contractor has provided the cognizant ACO with documentation that:

(1) accurately describes those policies, procedures and practices that the contractor currently uses in preparing cost proposals; and

(2) provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(b) Significant changes to the cost estimating system must be disclosed to the cognizant ACO on a timely basis.

(c) If the contractor notifies the ACO and the auditor that disclosed information relative to its estimating system contains commercial or financial information which it regards as privileged and confidential, such information will be protected and will not be released outside the Government without the permission of the contractor. The contractor should place an appropriate legend on the face of the disclosed document at the time of submission.

215.811-76 Characteristics of an Adequate Estimating System.

(a) General. The adequacy of an estimating system is dependent on the successful interrelationship of many variables. The relative importance or necessity of each is determined largely by the particular conditions applicable to an individaul contractor. In general, adequate systems should provide for the use of appropriate source data, utilize sound estimating techniques and appropriate judgment, maintain a consistent approach, and adhere to established policies and procedures. Although it is not possible to list all of the characteristics of an adequate estimating system, there are some characteristics that should be present in most systems. Listed in (b) below are examples of the types of characteristics which should be considered by the ACO when evaluating a contractor's estimating system. They are not, however, intended as a checklist.

(b) Evaluation. In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system--

(1) Establishes clear responsibility for preparation, review and approval of cost estimates;

(2) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates, and the various functions that contribute to the estimating process such as accounting, planning, etc.;

(3) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(4) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;
(5) Provides for appropriate supervision throughout the estimating process;
(6) Provides for consistent application of estimating techniques;
(7) Provides for detection and timely correction of errors;
(8) Protects against cost duplication and omissions;
(9) Provides for the use of historical experience where appropriate;
(10) Requires use of appropriate analytical methods;
(11) Integrates information available from other management systems as appropriate;
(12) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;
(13) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;
(14) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and
(15) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

215.811-77 Indicators of Potentially Significant Estimating Deficiencies. Some indicators of conditions that may produce or lead to significant estimating deficiencies are listed below. These indicators are not intended as a comprehensive checklist. They may, however, suggest the need for further analysis or evaluation. Since estimating is not an exact science and is partly based on judgment, differences between individual estimates and subsequent actual data are not necessarily indications of a system deficiency.
(a) Failure to assure that relevant historical experience is available to and utilized by cost estimators as appropriate.
(b) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.
(c) Consistent absence of analytical support for significant proposed cost amounts.
(d) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available.
(e) Recurring significant defective pricing findings within the same cost element(s).
(f) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired.

(g) Failure to provide established policies, procedures and practices to persons responsible for preparing and supporting estimates.

215.811-78 **Procedures.**

(a) System Reviews. Cognizant audit and contract administration activities will establish and manage regular programs for reviewing selected contractors' estimating systems. Reviews and reports shall be accomplished as a contract audit and contract administration office team effort, with the contract auditor designated as team leader. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to ensure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. The ACO or a representative should coordinate the contract administration activity's review, consolidate findings and recommendations, and, when appropriate, prepare a comprehensive written report which shall be submitted to the auditor. The contract administration activity's written report shall be attached to the estimating survey team report. A system review shall be conducted at least every three years of a contractor required to make disclosure pursuant to 215.811-72 and paragraphs (d) and (e) of the clause at 252.215-7003, Cost Estimating System Requirements, except where the auditor, in coordination with the ACO, determines that past experience and a current vulnerability assessment of the pricing activity of a contractor discloses low risk. If the auditor and the ACO determine that the Government is subject to high risk, estimating system reviews should be done more frequently. To the extent possible, the team leader should inform the contractor and the ACO of significant findings during the conduct of the review. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) Disposition of Survey Team Findings.

(1) Reporting of Survey Team Findings. The auditor will document the results of the system review in a report to the ACO. The report shall address the survey team findings and recommendations. If there are significant estimating deficiencies, the report shall recommend disapproval of all or a portion(s) of the estimating system.

(2) Field Pricing Reports. When the report of a system review indicates that there may be a significant estimating system deficiency, the effect of such deficiency shall be mentioned in the field pricing report for each contractor proposal reviewed until resolution of such deficiency.

(3) Contracting Officer Responsibility. The contracting officer responsible for negotiation of a specific proposal generated by an

estimating system with an identified deficiency shall evaluate such proposal in light of the system deficiency. If the contracting officer determines that the deficiency does not have a significant impact on the instant negotiation, then he or she should proceed with the instant negotiations. If the contracting officer determines that the system deficiency does affect the proposal and does have a significant impact on the instant negotiation, then the contracting officer should consider pursuing such alternatives as:

(i) Allowing additional time for the contractor to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost element(s) affected by the system's deficiency, e.g., what should the element(s) cost (See the Armed Services Pricing Manual (ASPM) for appropriate analytical techniques.);

(iv) Segregating the questionable areas as a cost reimbursable line;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract clause that provides for adjustment of the contract amount after award (reopener clause). The contracting officer who incorporated the clause into the contract shall be responsible for negotiating price adjustments required by the clause. A reopener clause necessitated by an estimating deficiency should clearly identify the amount(s) and item(s) which are in question at the time of negotiation. It should also indicate either a specific time or subsequent event by which the contractor will submit a proposal identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost and pricing data submitted as part of the supplemental proposal, and that, should the contractor fail to submit such a proposal, the contracting officer will make a unilateral price adjustment. Failure of the contractor and the Government to agree to the adjustment shall be a dispute under the Disputes clause.

(4) Initial Notification of Contractor. Upon receipt of the system review report, the ACO shall provide a copy to the contractor and allow 30 days or a reasonable extension thereto for submission of its written reponse. If no significant deficiencies are identified, the ACO will notify the contractor in writing in a timely manner.

(i) Contractor Agreement. If the contractor agrees with the report findings and recommendations, the contractor should, within 60 days of receipt of the initial notification, correct any identified system deficiencies or submit a corrective action plan showing milestones and actions leading to elimination of the deficiencies.

(ii) Contractor Disagreement. If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(5) Evaluation of Contractor's Response. The ACO, in consultation with the auditor, will evaluate the contractor's response and determine whether--

(i) The estimating system contains deficiencies which need correction;

(ii) Any such deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion(s) of the contractor's estimating system; or

(iii) Any proposed corrective action(s) are adequate to correct the deficiency.

(6) Notification of ACO Determination. The ACO will notify the contractor and the auditor of his/her determination and, if appropriate, of the Government's intent to disapprove all or a selected portion(s) of the system. The notice shall list the cost elements it covers and identify any deficiencies requiring correction. The notice shall also require the contractor to make correction or submit a corrective action plan within 45 days showing proposed milestones and actions related to all identified deficiencies.

(7) Monitoring Contractor's Corrective Action. The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take whatever action is determined necessary to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include but are not limited to bringing the issue to the attention of higher level management, reducing or suspending progress payments in accordance with FAR 32.503-6 and/or recommending nonaward of potential contracts.

(8) Notice of Disapproval.

(i) If, within 45 days after receipt of the notice of deficiency (see paragraph (6) above) or a reasonable extension thereto, the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies, all or a selected portion(s) of the contractor's estimating system shall be disapproved in writing. The notice of disapproval shall identify the cost element(s) covered by the disapproval and list the deficiencies which prompted the disapproval for each affected cost element.

(ii) A copy of the Notice of Disapproval shall be sent to the cognizant auditor and to each contracting office and contract administration office having substantial business with the contractor.

(9) Withdrawal of Estimating System Disapproval. After the ACO determines that the contractor has corrected the significant system deficiencies, the ACO shall notify the contractor, the auditor, and all affected contracting activities that the disapproval has been withdrawn.

215.811-79 Contract Clause. The contracting officer shall insert the clause at 252.215-7003 in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

215.870 Procedures for Identifying Contractors' Unallowable Costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR Part 31 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and contracting personnel.

(b) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(1) Assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

215.871 Estimated Data Prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) differences in business practices in competitive situations;
(2) differences in accounting systems among offerors;
(3) use of factors or rates on some portions of the data;
(4) application of common effort to two or more data items;
(5) differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(d) In the case of acquisitions of $100,000 or over, the contracting officer, after agreeing upon a negotiated contract price, will adjust the estimated prices in Blocks 26 of the original DD Form 1423 for the data items listed thereon to equal the amount included in the related priced contract line or subline item(s) for the data item(s). Adjusted DD Form 1423 will be maintained so as to be available at each contracting activity. The detachable portion of the DD Form 1423 (Blocks 17-26) with the estimated or adjusted prices shall not appear in the contract.

(e) When printing is to be acquired as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to Subpart 208.8 shall be appropriately identified.

215.872 Capital Investment Incentives.

(a) Policy. Although DoD profit and competition policies are intended to provide adequate incentives to the contractor for capital investment and productivity, it is also recognized that individual cases will arise when additional incentives may be appropriate. In

these individual cases, it is the policy of DoD that industrial modernization incentives may be negotiated and included in contracts for research, development, and/or production of weapons systems, major components, or material. The purpose is to motivate the contractor to invest in facilities modernization and to undertake related productivity improvement efforts it would not have otherwise undertaken or to invest earlier than it otherwise would have done.

(b) General. Any industrial modernization incentives program (IMIP) shall be accomplished in accordance with this coverage and with DoD Directive 5000.44 and DoD Guide 5000.44-G. Sufficient flexibility is provided in the directive and guide to allow the IMIP to be tailored to the requirements of an individual situation. The incentives may be in the form of productivity savings rewards, contractor investment protection, and/or other appropriate forms. They may be used separately or in combination, as addressed in subparagraphs (b)(1), (2) and (3) of this subsection. However, in no event, shall an IMIP agreement be made between DoD and a contractor until careful analyses have been conducted and reduced acquisition costs or equivalent benefits (such as improved quality, as a result of the application of the IMIP) are clearly evident. It may be generally desirable to initially negotiate a memorandum of understanding (MOU) to establish guidelines and criteria against which to analyze and negotiate a specific IMIP.

(1) Productivity Savings Reward (PSR). This incentive shares the savings achieved from facilities modernization and related productivity improvement efforts. This incentive may be used to encourage productivity improvements in all facets of the production process including major cost driving areas such as labor, materials, overhead, support systems (including software), and organizations. In order for these to be considered viable projects that are beneficial for both the Government and the contractor, the contractor must show that PSR is required for project implementation and that these projects are over and above requirements to meet normal contractual obligations. The scope and limitation of productivity savings rewards are as follows:

(i) Productivity savings rewards in conjunction with contractor capital investment will be based on an internal rate of return (IRR) analysis. The productivity savings rewards should be sufficient to allow the contractor to obtain an equitable return on the investment. Nonseverable plant equipment and property may be included on a limited basis as part of the contractor's investment basis for calculating the appropriate return on investment. The effect of any Government funding provided in conjunction with modernization efforts must be included in the contractor's IRR, and no contractor costs or expenses otherwise allocable and allowable to any specific DoD contract may be included.

(ii) Productivity savings rewards providing the contractor a reward for productivity improvements other than through capital investment will be based on an economic analysis of the benefits to the Government and the contractor. The negotiated sharing amount or percentage shall be based on benefits and risks to both parties. It will be paid only for savings that are validated, and will be negotiated for a period normally no longer than five years after the date of implementation.

(iii) Productivity savings rewards shall not constitute fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d).

(2) Contractor Investment Protection. If formally agreed to by the parties, this incentive would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. This incentive may permit the Government to acquire specific capital investments at no more than the undepreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in FAR Part 31. The scope and limitations are as follows:

(i) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR Part 45.

(ii) This investment incentive is designed primarily for the situation when one program dominates the business base and the contractor may bear unacceptable monetary risk from the modernization effort. The program must provide for a sufficient buy to allow for amortization of the planned investment.

(iii) Capital assets which may be covered by such an investment incentive include only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property.

(iv) The exact value and nomenclature of each piece of capital equipment must be included in the contract documents.

(v) The fiscal authority who commits funds to the resultant contract must certify that the approval authority has approved by fiscal year the amount of contingent Government liability and that the approval authority has notified the Congress in advance that the

technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(vi) Approval for use of this investment incentive must be obtained from the Secretary of the Military Departments, the Director of DLA, or the Director, Strategic Defense Initiative Organization. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, or AMC.

(vii) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation.

(3) Other Appropriate Incentives. Other incentives such as award fees and direct Government funding, based on IMIP methodologies, may be provided under IMIP when appropriate.

(c) Contracting Officer Evaluation. The contracting officer must evaluate the proposed IMIP agreement to determine that benefits to the U.S. Government can be expected. A contractor statement that the investments or actions would not be undertaken without, or will be accelerated with, the use of the incentive may be required. The evaluation should include the following elements:

(1) A cost/benefit analysis of the investment or action and the overall cost savings or other benefits to the Government, including the payback quantities and payback periods and how the savings will be reflected in the pricing of individual contracts.

(2) An analysis of the contractor's past investments and capital investment profiles, and the relationship of specific projects to the contractor's factory analysis.

(3) Other considerations such as:

(i) Interaction with other incentives provided on the contract.

(ii) Effects of variations in procurement quantities on the incentives.

(iii) How the incentive techniques are integrated with the overall acquisition strategy, including items such as second sourcing plans and multiyear procurement.

(iv) Effects on overhead and indirect costs.

(d) Negotiation.

(1) The Government objective should be to provide only those incentives sufficient to motivate the contractor to implement the desired investment or action. Ceiling should normally be provided to establish a maximum incentive amount.

(2) Emphasis should be placed on flowing down requirements or involvement to subcontractors and vendors where appropriate.

(3) Provisions should be provided establishing the extent to which the contractor may use equipment for commercial purposes. This should be reflected in the amount of incentive provided.

(4) The extent of disclosure or dissemination of technologies or processes contained in the IMIP are subject to negotiation and agreement.

(e) Contractual Requirements.

(1) Specific contract requirements should be structured to match the circumstances of the individual acquisition.

(2) Measurement and verification requirements should be addressed contractually, and systems established that match the incentives used and the needs in this area. Contractors should be required to develop, maintain, and provide data supporting any measurement of savings achieved until three years after final payment under the contract.

(f) Contract Clause. The contracting officer shall include the clause at 252.215-7001, "IMIP Productivity Savings Rewards", in all solicitations and contracts for which certified cost or pricing data were obtained involving the acquisition of supplies (i.e., weapon systems, equipment, and material) expected to result in contracts or contract modifications greater than $1 million. The clause is discretionary for inclusion in solicitations less than $1 million. Inclusion of the clause does not in itself result in the payment of any productivity savings reward amounts to the contractor - the clause becomes operable only when an IMIP business agreement has been executed establishing all the terms and conditions for payment of the productivity savings rewards.

215.873 Production Special Tooling and Production Special Test Equipment (PST/PSTE).

(a) General.

(1) Pursuant to 10 U.S.C. 2329, when a contractor, in order to perform a production contract, is required to acquire or fabricate production special tooling (PST) and production special test equipment (PSTE) at a total cost to a contractor of $1 million or more, the contracting officer shall comply with the procedures in paragraph (c) below, unless one of the exceptions in paragraph (d) below applies.

(2) When a contractor, in order to perform a production contract, is required to acquire or fabricate PST and PSTE at a total cost to the contractor of less than $1 million, the instant contract will generally provide for full payment.

(b) Definitions.

(1) "Production special tooling" and "production special test equipment", as used in this subpart, are those subsets of "special tooling" and "special test equipment" (as defined in FAR 45.101) that support production rates and quantities.

(2) "Maximum amount", as used in this subpart, means the total amount to be paid to the contractor on the instant and any future contracts as a direct cost for the PST and PSTE to be acquired or fabricated to perform the instant contract as negotiated with the contractor. The total amount can be a specific dollar amount or dollar ceiling.

(c) Procedures.

(1) When the criteria specified in paragraph (a) above apply, the contract shall include a special provision negotiated between the contractor and the Government, which specifies, as a minimum, the following:

(i) A listing of, or reference to a listing of, the PST and PSTE which the contractor will acquire or fabricate to perform the contract;

(ii) The maximum amount the contractor may be paid on the instant and future contracts for the PST and PSTE;

(iii) The amount to be paid to the contractor on the instant contract for the PST and PSTE being acquired or fabricated;

(iv) An amortization schedule for the payment, subject to availability of funds, of the balance of the amount specified in (c)(1)(ii) above;

(v) That, in the event the contract or program is terminated before the maximum amount specified for the PST and PSTE has been paid, for reasons other than the contractor's failure to perform, the contractor shall be paid the balance of the maximum amount, or the actual direct costs incurred, whichever is less, subject to the availability of funds;

(vi) That costs incurred by the contractor for the acquisition and fabrication of the PST and PSTE shall be treated as direct charges under the instant and future contracts. If the instant contract does not provide for payment of the maximum amount in (c)(1)(ii) above, the balance of these costs shall not be shifted, assigned to other programs, or charged to indirect cost pools;

(vii) The respective parties' rights to title.

(2) Where it is anticipated that future contracts will be awarded to the same contractor for the same or similar items for which the contractor will be able to use the PST and PSTE, the instant contract will provide for payment of at least 50 percent of the maximum amount specified for the PST and PSTE, except when the Head of the Agency determines, in advance of contract award, that the use of a percentage less than 50 percent is in the best interests of the Government and the use of that lower percentage will not cause an undue financial burden on the contractor.

(3) Whenever it is anticipated that no future contracts will be awarded as provided in (c)(2) above, the instant contract will provide for full payment of the maximum amount specified for the PST and PSTE.

(4) When a contract does not provide for payment of the maximum amount specified for the PST and PSTE under the instant contract and an amortization schedule is established in accordance with paragraph (c)(1)(iv) above, the contracting officer shall make the following adjustments for calculating profit objectives and facilities capital cost of money on the instant and future contracts:

(i) The contracting officer shall separately calculate a cost of money amount for the unamortized portion of PST and PSTE costs by multiplying the unamortized portion of the PST and PSTE costs by the current cost of money rate by the period of time (years or portions thereof) until the next contract is awarded for which charges for the PST and PSTE will be reimbursed. This cost of money amount computed above shall be included in the price of the instant contract. When the weighted guidelines method is used, this amount shall not be included on the DD Form 1861, but will be added to Line 32 of the DD Form 1547.

(ii) When establishing a profit objective using DFARS Subpart 215.9, only those PST and PSTE costs being priced for payment under the instant contract action will be profit-bearing on that contract. These costs shall be included as part of the cost base for performance risk and contract type risk (including working capital adjustment). The unamortized balance of the PST and PSTE costs shall not be profit-bearing on the instant contract, nor shall they be included in the facilities capital employed base.

(iii) For future contract actions on which the unamortized balance of the PST and PSTE costs (or portions thereof) will be paid thereunder, cost of money and profit shall be calculated in accordance with the procedures of (c)(4)(i) and (ii) above.

(d) Exceptions. The procedures set forth in paragraph (c) above do not apply to contracts:

(1) Where the PST and PSTE will be used by the contractor solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding procedures contained in FAR Part 14;

(3) Where prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public; or

(4) Where price is set by law or regulation.

215.874 Follow-Up on Contract Audit Reports. It is the policy of the Department of Defense for contracting officers to make the best possible use of contract audit advice. The DoD policy on contract

audit follow-up is contained in Department of Defense Directive 7640.2, "Policy for Follow-Up on Contract Audit Reports."

215.875 Availability of Contractor Records. In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215-7002, "Availability of Contractor Records", in solicitations and contracts which--

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

215.876 Work Measurement Systems.

(a) Definition. "Work measurement systems (WMS)", as used in this section, means systems used to analyze the touch labor content of a manufacturing operation, establish labor standards for that operation, and measure and analyze variances from those standards. The purpose of WMS is to continuously improve both the manufacturing operation and the labor standards used in that operation.

(b) Policy. It is the policy of the Department of Defense to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance. The contracting officer, in coordination with the Program Manager, shall include provisions in the contract to implement the program's work measurement system requirements. An example of an acceptable set of criteria for WMS is found in MIL-STD-1567A. Either Mil-STD-1567A or the contractor's existing WMS, if acceptable to the Government, should be appropriately tailored for the specific program or contract.

(c) Applicability. Except as provided below, solicitations and resulting production contracts for major weapons systems or subsystems in excess of $20 million annually or a total cost of $100 million normally should contain provisions for WMS, appropriately tailored to be both consistent with program requirements and compatible with existing contractor technical and management processes and procedures, such as the principle of continuous improvement of the total quality management process. WMS requirements may also be included in Full Scale Development (FSD) contracts exceeding $100 million when appropriate (e.g., to assist in transitioning from FSD to production). Work measurement systems should not be required when:

(1) Procuring commercial products (see FAR 11.001);

(2) There will be low volume, nonrepetitive production runs;

(3) The submission and certification of cost or pricing data is not required; or

(4) There will not be a cost benefit from the imposition of these systems. This decision will be documented and approved in accordance with agency procedures.

PART 225--FOREIGN ACQUISITION

225.000 **Scope of Part.** This part supplements FAR 25 and provides special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

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PART 225--FOREIGN ACQUISITION
SUBPART 225.1--BUY AMERICAN ACT--SUPPLIES

225.101 Definitions. As used in this part, the words and terms defined in this paragraph shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

"Defense cooperation agreement country end product" means an item listed in the defense cooperation country agreement and produced in that country.

"A defense cooperation country" is a foreign country which has a defense cooperation agreement and for which a Determination and Findings (D&F) was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 225.7501.

"Defense cooperation country offer" means an offer of a defense cooperation country end product, including transportation to destination.

"Defense equipment" means any equipment, item of supply, component, or end product purchased by the Department of Defense.

"Domestic concern" means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this part, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

"Domestic end product" means (i) an unmanufactured end product which has been mined or produced in the United States; or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) as to which the Secretary concerned has determined that it would be

inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 25.102(a)(3)).

"FMS/Offset arrangement country offer" means an offer of a FMS/Offset arrangement country end product, including transportation to destination.

"FMS/Offset arrangement country" is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 225.7310(a).

"FMS/Offset arrangement country end product" means (i) an unmanufactured end product mined or produced in a FMS/Offset arrangement country; or (ii) an end product manufactured in a FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Foreign concern" means a concern that is not a domestic concern.

"Participating country" is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S., and for which a blanket D&F was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 225.7401.

"Participating country end product" means (i) an unmanufactured end product mined or produced in a participating country; or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

"Participating country offer" means an offer of a participating country end product, including transportation to destination.

"Qualifying country" means any country defined as a defense cooperation country, a FMS/Offset arrangement country, or a participating country.

"Qualifying country component" means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

"Qualifying country end product" means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable D&F has been made waiving the Buy American Act

restrictions; or (iii) a defense cooperation country agreement listed item.

"Qualifying country offer" means an offer of a qualifying country end product, including transportation to destination.

"Source" (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

"United States" means the States, the District of Columbia, Puerto Rico, and possessions. It does not include leased bases or trust territories.

225.102 Policy.

(S-70) Buy American Act Requirements. Except as provided in this section, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 225.105.

(1) Use Outside the United States. The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisition of supplies and applicable services for use outside the United States.

(2) Unreasonable Cost or Inconsistency With the Public Interest. The restrictions of the Buy American Act and the Balance of ayments Program do not apply when it is determined by the Secretary concerned that the cost of a domestic end product would be unreasonable, or that acquisition of a domestic end product would be inconsistent with the public interest. However, when evaluating the acceptability of an end product of a country having a Foreign Military Sales (FMS)/offset arrangement with the United States (225.7310), or an end product of a country having a Defense Cooperation Agreement with the United States (225.7500), the determination that the acquisition of a domestic end product would be inconsistent with the public interest is delegated at the levels set forth under 225.102(S-71).

(3) Nonavailability in the United States. The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial

quantities and of a satisfactory quality; or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in FAR 25.108(d)(1).

(4) Commissary Resale. The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in this subpart.

(S-71) A nonavailability determination is not required for end products or components listed in (S-72) below or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(1) at a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(2) by the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(3) by the head of the contracting activity (HCA) or his immediate deputy, or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(4) by the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(S-72) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(1) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier.

(2) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements.

(S-73) Balance of Payments Program Requirements. The 50% evaluation factor in favor of domestic offers, implemented in 225.105, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50% factor beyond the time when the U.S. balance of payments deficit is corrected.

(1) Although the evaluation procedures in 225.105 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see FAR Subpart 1.4) from the evaluation procedures of 225.105 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Assistant Secretary of Defense (Production and Logistics)(ASD(P&L)) or his designee.

225.103 Agreements With Certain Foreign Governments.
(See Subparts 225.73, 225.74 and 225.75.)

225.105 Evaluating Offers. In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense.

(S-70) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (S-71) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest.

(S-71) Except as provided in this subparagraph (S-71) and in (S-73) and (S-74) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50% of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6% of that offer, whichever results in the greater evaluated price, except that a 12% factor shall be used instead of the 6% factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both; (ii) small purchase procedures are not used; and (iii) any contract award to a domestic concern which would result from applying the 12% factor, but which would not result from applying the 6% or 50% factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12% factor is applied, but would not be made

if the 6% factor or 50% factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tie-breaking procedures in 214.407-6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subject to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(S-72) The following examples illustrate how the procedure in (S-71) above should be applied. Throughout these examples, "domestic offer--large" means a domestic offer which is not from a small business or labor surplus area concern; "domestic offer--small" means a domestic offer which is from either a small business concern or a labor surplus area concern, or both.

EXAMPLE A

Nonqualifying Country Offer, including duty of $4,500...	$14,500
Domestic Offer--Large.....	15,100
Domestic Offer--Small.....	15,110

Award on Domestic Offer--Large. Domestic Offer--Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50% factor, would be $14,500 less $4,500 duty, (i.e., $10,000), plus 50% of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6% factor, it would be $14,500 plus 6% of $14,500 (i.e., $870), or $15,370; therefore, the 6% factor is added, and the Domestic Offer--Large is the low evaluated offer.

EXAMPLE B

Nonqualifying Country Offer, including duty of $2,000.....	$12,000
Domestic Offer--Large.....	15,000

Award on Domestic Offer--Large. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 6% factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000. resulting in a tie and consequent award on the Domestic Offer--Large.

EXAMPLE C

Nonqualifying Country Offer, including duty of $3,500	$13,500
Domestic Offer--Large	17,000
Domestic Offer--Small	15,100

Award on Domestic Offer--Small. Nonqualifying Country Offer, adjusted by 50% factor is $15,000; adjusted by 12% factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer--Small.

EXAMPLE D

Nonqualifying Country Offer, including duty of $70,000	$270,000
Domestic Offer--Large	310,000
Domestic Offer--Small	302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50% factor is $300,000; adjusted by 12% factor, it is $302,400; adjusted by 6% factor, it is $286,200. Therefore, Domestic Offer--Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

EXAMPLE E

Nonqualifying Country Offer, including duty of $2,000	$ 8,000
Domestic Offer--Large	10,500
Domestic Offer--Small	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE F

Nonqualifying Country Offer, including duty of $2,000	$ 8,000
Domestic Offer--Large	10,000
Domestic Offer--Small	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted, and the award is made on the nonqualifying country offer.

EXAMPLE G

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

(S-73) When a qualifying country offer is received for defense equipment listed in 225.7405 or FAR 8.203, rejection of that offer in the interest of protecting the domestic mobilization base is required, except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances when it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. When rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 225.7405 or FAR 8.203, a copy of the proposed decision shall be forwarded to OASD(P&L)(P) (International Acquisition), 10 working days in advance of issuance of the rejection.

(S-74) When proposed awards are submitted for Secretarial decision pursuant to (S-71) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S-75) When performing the evaluation in (S-71) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12% evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

225.107 Acquisition From or Through Other Government Agencies.
Balance of Payments evaluation procedures are not applicable to transactions described in FAR 25.107(a), (b) and (c).

(S-70) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (1) a mandatory Federal Supply Schedule which includes a domestic end product; or (2) a nonmandatory Federal Supply Schedule.

(S-71) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50% evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(S-72) In the case of coordinated acquisition under Part 208, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department, except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department.

225.108 Excepted Articles, Materials, and Supplies.

(a) Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (For construction material, see FAR 25.2.)

(d)(1) Aluminum clad steel wire.
Sperm oil.

(d)(S-70) Scrap. Scrap generated in, collected in, and prepared for processing in the United States, shall be considered as of domestic origin.

225.109 Solicitation Provisions and Contract Clauses.

(a)(S-70) The provision at 252.225-7000, Buy American-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate, and shall be inserted in any

solicitation which includes the clause at 252.225-7001, unless the solicitation is solely for machine tools (see 225.7008(e)).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105.

(d)(S-70) The clause at 252.225-7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225-3, Buy American Act-Supplies, and FAR 52.225-7, Balance of Payments Program, unless the solicitation is solely for machine tools (see 225.7008(e)). The contracting officer shall insert the clause at 252.225-7001 in all solicitations and contracts (i) not utilizing small purchase procedures, (ii) which do not contain the clause at 252.225-7006, and (iii) for supplies and for services, which services require the furnishing of supplies (e.g. the leasing of equipment), except as cited in 225.302(72)(1).

(d)(S-71) Reserved.

(d)(S-72) The contracting officer shall insert the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, whenever the clause at 252.225-7001 or the clause 252.225-7006 is used in the solicitation or contract.

(S-70) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

delegated to the ACO in accordance with 242.203(a)(74). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) Data Required by DCASR New York.

(i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCASR New York in the format shown below:

TO: Commander
DCASR New York
ATTN: Customs Function
201 Varick Street
New York, NY 10014
A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 252.225-7014 of the DoD FAR Supplement or 252.225-7008 of the Supplement. Verification has been made that foreign supplies are required for the performance of the contract. If required, prime contract price has been or will be adjusted in accordance with 225.603(b)(3) of the DoD FAR Supplement.

In accordance with 225.603(b)(4) of the Supplement, the following information is provided:

Prime Contractor Name:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name:
Number of the Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number (Appendix N of the DoD FAR Supplement):

Signature:
Title:

(ii) If a contract modification results in a change to any data previously furnished to DCASR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCASR New York.

(5) Customs Forms and Duty-Free Entry Certificates.

(i) Execution of Duty-Free Entry Certificates. The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Transportation Officer, DCASR New York. Upon receipt of import documentation for incoming shipments from the contractor, his agent, or the U.S. Customs Service, the Transportation Office, DCASR New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) Customs Import Documentation. Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or his agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(c) Immediate Entry and Release. Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchase" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501, 7501A, or 7506 and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501, 7501A, or 7506 and appropriate duty-free entry certificates. Each Department designates the individuals responsible for issuance of Immediate Release Permits.

225.604 Exempted Supplies.

(b) Supplies for Vessels or Aircraft Operated by the United States.

(1) Subject to the considerations set forth in FAR 25.605, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of vessel or aircraft and for the comfort and safety of the persons on board,

procurements less than $25,000 when simplified small purchase procedures are being used.

(d) A valve shall be considered to be of United States or Canadian origin if it is manufactured in the United States or Canada and the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free entry certificate may be issued).

(e) The clause at 252.225-7024, "Restriction on Acquisition of Foreign Valves", shall be inserted in all solicitations and contracts for valves as defined at 225.7001 that obligate FY 89, 90, or 91 funds, except for procurements under $25,000 when simplified small purchase procedures are being used.

(f) When valves are the only items being procured, do not include any of the clauses at 252.225-7000, -7001, -7005, or -7006. If valves are not the only items being procured, include the clauses at 252.225-7000, -7001, -7005, and -7006, as appropriate.

225.7013 Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE.

(a) Definitions. As used in this section:

"Competent" means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including a consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

"Foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

"United States firm" means a business entity other than a foreign firm.

(b) Policy. Section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Public Law 100-180) prohibits the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDTE), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm. For purposes of implementing this section, HCAs are authorized to make this certification (see paragraph (c)(2)). Accordingly, except as provided for in paragraph (c) below, any funds appropriated to, or for the use of DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a Broad Agency

Announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDTE in connection with the SDI. This prohibition, however, is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

(c) Exceptions. This prohibition shall not apply:

(1) to contracts awarded to a foreign government or firm if the contracting officer determines that--

(i) the contract is to be performed within the United States; or

(ii) the contract is exclusively for RDTE in connection with antitactical ballistic missile systems; or

(iii) the foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share may be considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the U.S. and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(2) If the HCA has certified in writing, prior to contract award, that a contract for research, development, testing, or evaluation (other than for RDTE described in paragraph (c)(1)(ii) above) cannot be competently performed by a United States firm at a price equal to or less than the price at which the RDTE would be performed by a foreign government or firm.

(d) Procedures.

(1) When awarding a prime contract to a foreign government or firm under paragraph (c)(2) above, the contracting officer or Source Selection Authority, as applicable, shall make a determination which will be the basis for the certification in paragraph (c)(2) above.

(i) The determination must describe the contract effort; state the number of proposals solicited and received from both U.S. and foreign firms; identify the proposed awardee and the amount of the contract; state that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the BAA; and state that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(2) If award is based on a determination under paragraph (d)(1) above, or award is based on other than full and open competition in accordance with FAR 6.3, or award is made as the result of an unsolicited proposal in accordance with FAR Subpart 15.5, then a copy of the certification (from paragraph (c)(2) above) and, as appropriate, the determination or justification and approval (J&A) shall be forwarded within 30 days of contract award to the SDI Organization, Attention: SDIO/MN, The Pentagon, Washington, DC 20301-7100.

(e) Solicitation Provision. Unless foreign participation is otherwise excluded, the contracting officer shall insert, in all competitively negotiated SDI solicitations for RDTE, a provision substantially the same as the provision at 252.225-7028, "Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE".

PART 228--BONDS AND INSURANCE
SUBPART 228.1--BONDS

228.101 Bid Guarantee.

228.101-1 Policy on Use.

(b) Only separate bid bonds, or United States bonds, Treasury notes or other public debt obligations of the United States are acceptable for construction contracts.

228.101-3 Contract Clause.

(b) The contracting officer shall insert the clause at 252.228-7007, Bid Bond, in lieu of FAR clause 52.228-1, in solicitations and contracts for construction.

228.102 Performance and Payment Bonds for Construction Contracts.

228.102-1 General.

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Contracting Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain a payment bond from his subcontractor in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-priced construction subcontract exceeding $25,000. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

228.103 Performance and Payment Bonds for other than Construction Contracts.

228.103-1 General. Subcontract bonds shall not be executed on Standard Forms 25 and 25-A, or on DD Form 1673. The forms set forth in FAR 53.228 are authorized and may be adapted to fit specific cases.

228.103-2 Performance Bonds.

(a)(1) Subject to the general policy stated in FAR 28.103-2, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Procurement and Production, US Army Materiel Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Office of the Assistant Secretary of the Navy

(Shipbuilding & Logistics), Director, Contracts & Business Management; (iii) for the Air Force, by the Director of Contracting and Manufacturing Policy, DCS/RD&A; (iv) for the Defense Logistics Agency, by the Executive Director, Contracting; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Production and Logistics) for information.

(a)(4) The contracting officer shall insert the provision at 252.228-7004, Bonds or Other Security, as well as the clause at FAR 52.228-1, Bid Guarantee, in solicitations for dismantling, demolition, or removal of improvements in accordance with 237.302.

228.105 Other Types of Bonds.

228.105-70 Fidelity and Forgery Bonds. Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (a) for the Army, by the Head of a Contracting Activity; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command (PMC); (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director, and (h) for the Defense Mapping Agency, by the Staff Director of Logistics.

228.106 Administration.

228.106-2 Substitution of Surety Bonds. A new surety bond may be substituted when approved, (a) for the Army, by The Judge Advocate General; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command; (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief,

Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director; and (h) for the Defense Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

228.106-70 Review of Bonds and Notification of Surety. All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FAR 49.402-4(a)).

PART 247--TRANSPORTATION
SUBPART 247.5--OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

247.570 Scope. Sections 247.570 through 247.574 set forth the Department of Defense policies and procedures for implementing the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. For such cargo, this constitutes an approved class deviation from FAR Subpart 47.5 in its entirety. This subpart does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 1241(b), which while applicable to the Department of Defense, does not require DFARS coverage in view of the fact that compliance with the 1904 Act has historically resulted in DoD's far exceeding the 1954 Act's requirements for shipment by private commercial carrier.

247.571 Definitions. As used in this subpart:

"Armed services" means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

"Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication or assembly by the contractor or any subcontractor.

"Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

"Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

"Subcontractor" includes a supplier, materialman, distributor or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

"Supplies" means all property except land and interests in land that is readily identifiable for eventual use by the armed services, or owned by the armed services, at the time of transportation by sea. It includes (but is not limited to) public works, buildings and facilities, ships, floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools, material, equipment, and stores of all kinds; end items, construction materials and the components of the foregoing.

"U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

247.572 Policy.

(a) Authority Citation: 10 U.S.C. 2631.

(b) Supplies as defined in 247.571 shall be transported exclusively on U.S.-flag vessels unless:

(1) Those vessels are not available and appropriate notices are given and approvals received;

(2) The Secretary of the Navy finds that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the armed services are higher than charges to private persons for the transportation of like goods.

(c) The contracting officer shall ensure that contracts provide for the use of Government-owned vessels when the security classification prohibits the use of other than Government-owned vessels.

(d) The Cargo Preference Act of 1904 does not apply to ocean transportation of (1) products obtained for contributions to foreign assistance programs; or (2) products owned by agencies other than the Department of Defense. For these products, FAR Subpart 47.5 applies.

247.573 Procedures.

247.573-1 Purchase of Ocean Transportation Incidental to a Contract for Supplies, Services, or Construction.

(a) This subsection applies to those acquisitions where ocean transportation will be used by a contractor or subcontractor in its performance of a supply, service or construction contract or subcontract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), as follows:

(1) In developing the Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) In developing appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) When the contracting officer is notified in accordance with the clause at 252.247-7203, Transportation of Supplies by Sea, that the contractor or subcontractor considers that:

(1) No U.S.-flag vessels are available: the contracting officer shall request confirmation from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC), that no U.S.-flag vessels are available.

(2) The freight charges to the armed services, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons having no involvement in the contract: the contracting officer may waive or approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment. Prior to granting such a waiver, the contracting officer shall solicit oral or written advice from the Commander, MSC or

designated representative, MSC. The Commander, MSC shall consider, as appropriate, evidence from published tariffs, industry publications, the Maritime Administration, and other available sources when advising the contracting officer whether the waiver should be granted.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable: the contracting officer shall forward a report to the Commander, MSC through the head of the contracting activity and the Director, Office of Contracts and Business Management, MSC. The report shall take into consideration that the Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry which starts from the premise that lower prices can be obtained from foreign-flag shippers. Accordingly, the report should consider not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the mandatory use of U.S-flag vessels in extraordinarily inefficient circumstances. If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secetary of the Navy, via ASN(S&L)(CBM), for a determination.

(i) The report shall be in D&F format and include, as appropriate, an analysis of whether the cost to the armed services is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of U.S.-flag rates charged on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and any other relevant economic and financial considerations affecting the armed services.

(ii) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(d) When the successful offeror indicates in accordance with the solicitation provision at 252.247-7202, Representation of Extent of Transportation of Supplies by Sea, that supplies will be transported by sea under the resulting contract or subcontract, the contracting officer shall within 30 days of award forward one copy of the first page of the DD Form 350 for that contract to the Chief, Division of National Cargo, U.S. Maritime Administration, 400 - 7th Street, SW, Washington, DC 20590.

247.573-2 **Direct Purchases of Ocean Transportation Services.**

(a) This subsection applies to those acquisitions where ocean transportation is the principal purpose of the contract such as Time Charters, Voyage Charters, Contracts of Affreightment, Dedicated Contractor Contracts of Affreightment, Ocean Bills of Lading, etc. These acquisitions shall be coordinated, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(b) The MSC shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with applicable laws and regulations. The Commander, MSC or designated representative is authorized to make any determination as to the availability of United States-flag vessels required to assure proper utilization.

(c) All solicitations for ocean transportation services for supplies owned by the armed services of the United States shall provide, as an evaluation factor, a preference for U.S.-flag vessels. No contract of the type described in paragraph (a) above shall be awarded for a foreign-flag vessel unless:

(1) The contracting officer determines in accordance with paragraph 247.573-1(c)(1) that no U.S.-flag vessels are available, and obtains approval of the Commander, MSC or designated representative; or

(2) The contracting officer determines in accordance with paragraph 247.573-1(c)(2) that the freight charges proposed by U.S.-flag vessels to the armed services are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander, MSC or designated representative, or

(3) The contracting officer performs the analysis and forwards the report in accordance with subparagraph (i) below, and the Secretary of the Navy determines that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(i) When the contracting officer believes, based solely on economic considerations, that the freight offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer shall forward a report through the head of the contracting activity to the Commander, MSC. The report shall take into consideration the factors in paragraph 247.573(b)(3). If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy for a determination. The report shall be in D&F format and shall include, as appropriate:

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.8 or profit in accordance with DFARS Subpart 215.9

including the basis for the contracting officer's conclusion that the costs are unreasonable or that the profit proposed exceeds that which the contracting officer determines is necessary to adequately motivate the contractor and compensate the contractor for the degree of risk incurred (i.e., the costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels). The report shall include, as appropriate, a description of efforts taken by the contracting officer, pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report shall be considered the referral to higher authority.

(B) An analysis of whether the cost to the armed services is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into account factors such as: the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of rates charged by other U.S.-flag carriers on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.), and any other relevant economic and financial considerations affecting the armed services.

(C) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such differential may indicate a need for further review.

247.574 Solicitation Provision and Contract Clause.

(a) The contracting officer shall insert the provision at 252.247-7202, Representation of Extent of Transportation of Supplies by Sea, in full text, in all solicitations other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13, or those where the contracting officer knows that ocean transportation of supplies as defined at 247.571 will not occur in the performance of the contract or subcontract thereunder.

(b) The contracting officer shall insert the clause at 252.247-7203, Transportation of Supplies by Sea, in all solicitations and contracts other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13.

(c) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses consistent with this subpart concerning the vessels to be used.

252.203-7000 Advertising and Coupon Redemption for Military Resale Activities. As prescribed at 203.570, insert the following clause:

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (APR 1974)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity, shall contain the following statement:

"This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

252.203-7001 Special Prohibition on Employment. As prescribed in 203.571-5, insert the following clause in all solicitations and contracts other than those entered into using the small purchase procedures of FAR Part 13:

SPECIAL PROHIBITION ON EMPLOYMENT (MAR 1989)

(a) Definitions. "Arising out of a contract with the Department of Defense," as used in this clause, means any act in connection with (1) attempting to obtain, (2) obtaining, or (3) performing a contract or subcontract of any agency, department, or component of the Department of Defense.

"Conviction of fraud or any other felony", as used in this clause, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

"Date of conviction", as used in this clause, means the date judgment was entered against the individual.

(b) 10 U.S.C. 2408 prohibits a person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense from working in a management or supervisory capacity on any defense contract, or serving in various other capacities for a defense contractor, for up to five (5) years from the date of conviction, as set forth in paragraph (c) below. Defense contractors are subject to a criminal penalty of not more than $500,000 if they are convicted of knowingly employing a person under a prohibition or allowing that person to serve in violation of 10 U.S.C. 2408.

(c)(1) The Contractor agrees not to knowingly employ any person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve either on its

board of directors, as a consultant, or as an agent or representative for a period of five (5) years from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer, unless waived.

(2) The Contractor agrees not to knowingly employ any person, convicted on or before September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, in a management or supervisory capacity on any Department of Defense contract or subcontract or allow that person to serve on its board of directors for a period of one (1) year from the date of conviction or for the period of any resultant debarment, whichever is longer.

(d) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as suspension or debarment, may direct the cancellation of the contract at no cost to the Government, or terminate this contract for default.

(e) The Contractor may submit written requests for waiver of the prohibitions in paragraph (c)(1) above to the Contracting Officer who will process such requests in accordance with DFARS 203.571-4. Requests shall clearly identify the person involved, the nature of the conviction and resultant sentence or punishment imposed, the reasons for the requested waiver, and an explanation of why waiver of the prohibitions of paragraph (c)(1) above is in the interests of national security.

(f) The Contractor agrees to include the substance of this clause, including this paragraph (f), appropriately modified to reflect the identity and relationship of the parties, in all subcontracts exceeding $25,000.

(End of clause)

252.203-7002 Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former Department of Defense (DoD) Employees. As prescribed in 203.170-5, insert the following clause:

STATUTORY COMPENSATION PROHIBITIONS AND REPORTING REQUIREMENTS RELATING TO CERTAIN FORMER DEPARTMENT OF DEFENSE (DOD) EMPLOYEES (APR 1988)

(a) Definitions. Terms used in this clause are defined at section 203.170-1 of the Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2).

(b) Prohibition on Compensation.

(1) 10 U.S.C. 2397b and 2397c prohibit a major defense contractor from offering or providing any compensation valued in excess of two hundred fifty dollars ($250) to a former Department of Defense (DoD) official who left DoD service on or after 16 April 1987 and who, while employed by DoD, performed procurement-related functions in connection with that same defense contractor. This prohibition runs for the two-year period beginning on the date of such person's separation from service in DoD.

(2) The Contractor, if a major defense contractor, agrees not to provide, for such two-year period, any compensation to such a former DoD official.

(3) DoD employees may request from their Designated Agency Ethics Official (DAEO) a written opinion on the applicability of 10 U.S.C 2397b prior to the acceptance of compensation. If the opinion rendered by the DAEO states that the law is inapplicable, and that the individual may accept compensation from the Contractor, there shall be a conclusive presumption that the offering and the acceptance of such compensation is not a violation of the statute.

(c) Report Concerning Former DoD Employees.

(1) The Contractor shall submit a separate written report, as described in (c)(2) below, for each calendar year covered by this contract (commencing with the calendar year of award and extending through the end of the calendar year in which final payment is made) if the calendar year commenced after the end of a Government fiscal year in which the Contractor was awarded one or more DoD contracts aggregating ten million dollars ($10,000,000) or more. In multidivisional corporations, in addition to corporate headquarters, each segment which contracts directly with the Government shall separately submit such reports. Each report shall be submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301-1600 listing those persons in its employ or whom it has otherwise compensated, who are former DoD employees who left service on or after 16 April 1987, if--

(i) They served in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for Grade GS-13 of the General Schedule or served in the Armed Forces in a pay grade of 04 or higher;

(ii) They were compensated by the Contractor during the reporting period; and

(iii) Such compensation was provided within two (2) years after the former DoD employee left service in the Department of Defense.

(2) The report shall contain the following elements:

(i) Each individual's name and an identification of the agency in which each individual was employed or served on active duty during the last two (2) years of the individual's service with DoD;

(ii) Each individual's job title(s) during the person's last two (2) years of service with DoD and a list of major defense systems on which each individual performed any work;

(iii) A complete description (exclusive of proprietary information) of any work that each individual is performing, or did perform, on behalf of the Contractor during the calendar year covered by the report (If the procurement is classified, the Contractor may

use a generalized description which will not compromise the classified nature of the work.);

(iv) An identification of each major defense system on which each individual has performed any work on behalf of the Contractor.

(3) Each report required under (c)(1) above shall be submitted not later than April 1 of the year following the end of the calendar year for which the report is being made.

(4) A DD Form 1787 properly certified by the individual to whom it relates may be submitted to satisfy the reporting requirement as to any single individual.

(5) The Contractor need not submit duplicate reports to the Government. Submission of a report meeting the requirements of this clause, under another, concurrent contract with DoD will satisfy the reporting requirement of this contract as to any single calendar year.

(d) Penalties for Failure to Comply.

(1) Civil Fines for Failure to Comply with 10 U.S.C. 2397b. A Contractor who knowingly offers or provides any compensation to a former DoD official in violation of the statute, and who knew or should have known that the acceptance of such compensation would be in violation of such statute, shall be subject to a civil fine, not to exceed five hundred thousand dollars ($500,000).

(2) Liquidated Damages for Failure to Comply with 10 U.S.C. 2397c.

(i) For each knowing violation of the statutory prohibition on providing compensation, the Contractor agrees to pay to the United States Government as liquidated damages the greater of either one hundred thousand dollars ($100,000) or three (3) times the total amount of compensation paid by the Contractor to the former DoD official during the period in which such compensation was in violation of the statutory prohibition.

(ii) Liability for liquidated damages under this clause survives final payment under this contract and may be recouped against payments due under other contracts with the Contractor.

The rights and remedies under this clause are in addition to and do not limit any rights afforded to the Government under this contract or as otherwise provided by law.

(iii) Liquidated damages will be computed based upon the number of actual violations by the Contractor, and not on the number of contracts in which this clause appears.

(3) Penalties for Failure to Report. If the Contractor knowingly fails to file a report in accordance with (c) above, the Contractor shall be subject to an administrative penalty not to exceed ten thousand dollars ($10,000). The final determination of the penalty to be charged to the Contractor shall be made by the Secretary of Defense or designee after the Contractor is afforded an opportunity for an agency hearing on the record in accordance with agency hearing

procedures. The Secretary's determination shall form a part of the record and shall be subject to judicial review under Chapter 7 of Title 5, United States Code.

(End of clause)

252.203-7003 Display of DoD Hotline Poster. As prescribed in 203.7002, insert the following clause.

DISPLAY OF DOD HOTLINE POSTER (OCT 1987)

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under DoD contracts, DoD Hotline Posters prepared by the Office of the Inspector General, DoD.

(b) DoD Hotline Posters may be obtained from the DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202-2884.

(c) The Contractor need not comply with paragraph (a) above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports. (See DoD FAR Supplement 203.7000(c).)

(End of clause)

252.225-7024 Restriction on Acquisition of Foreign Valves. As prescribed in 225.7012(e), insert the following clause:

RESTRICTION ON ACQUISITION OF FOREIGN VALVES (JAN 1989)

(a) The Contractor agrees that those valves used in piping for naval surface ships and submarines within Federal Supply Classifications 4810 (valves, powered) and 4820 (valves, non-powered) to be delivered as end items under this contract shall be of United States or Canadian origin.

(b) For the purpose of this clause, a valve shall be considered to be of United States or Canadian origin if (1) it is manufactured in the United States or Canada; and (2) the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end item and duty (whether or not a duty-free entry certificate may be issued).

(End of clause)

252.225-7025 Reserved.

252.225-7026 Reserved.

252.225-7027 Reserved.

252.225-7028 Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE. As prescribed at 225.7013(e), insert the following provision:

NOTICE OF PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN GOVERNMENTS OR FIRMS FOR THE CONDUCT OF STRATEGIC DEFENSE INITIATIVE RDTE (MAR 1989)

(a) Definitions. As used in this solicitation:

"Competent" means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including a consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

"Foreign firm" means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than fifty percent (50%) of the stock is owned or controlled by one or more foreign nationals.

"United States firm" means a business entity other than a foreign firm.

(b) Policy. This provision implements Section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Public Law 100-180) which prohibits the award of certain contracts, for the conduct of

Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDTE), to foreign governments or firms. Accordingly, except as provided for in paragraph (c) below, any funds appropriated to, or for the use of DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a Broad Agency Announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDTE in connection with the SDI. Foreign governments and firms, however, are encouraged to submit offers since this clause is not intended to restrict SDI access to unique foreign expertise when contract performance requires a level of competency unavailable in the United States.

(c) Exceptions. The prohibition does not apply to a foreign government or firm if:

(1) the contract is to be performed within the United States; or

(2) the contract is exclusively for RDTE in connection with antitactical ballistic missile systems; or

(3) the foreign government or firm agrees to share a substantial portion of the total contract cost. The foreign share may be considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the U.S. and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(4) The U.S. Government determines that the contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the RDTE can be performed by a foreign government or firm.

(d) The Offeror hereby certifies that it is ____ is not ____ a United States firm as defined in paragraph (a) above.

(End of provision)

(c) The period of detention shall not be considered as time spent in the performance of this contract, and the Government shall not be obligated to make payment under this contract on account of such person for the period of the detention except as provided in this clause.

(d) The obligation of the Government to make payments provided for by this clause shall be applicable to the entire period of detention except that it is expressly conditioned upon and subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive the earlier expiration, completion or termination of this contract.

(e) The Contractor shall not be reimbursed under the provisions of this clause for payments made to employees for a period of detention during which the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

252.228-7004 Bonds or Other Security. As prescribed at 228.103-2(a)(4), insert the following provision:

BONDS OR OTHER SECURITY (APR 1977)

A bid guarantee in the penal sum of $_____ must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $_____ and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting Officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

252.228-7005 Reserved.

252.228-7006 Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles. As prescribed at 228.7101, insert the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (JAN 1969)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of the Contractor's applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

252.228-7007 Bid Bond. As prescribed in 228.101-3(b), insert the following clause in solicitations and contracts:

BID BOND (MAR 1989)

(a) The Offeror (Bidder) shall furnish a separate bid bond, or United States bonds, Treasury notes or other public debt obligations of the United States, in the proper form and amount, by the time set for opening of bids. Failure to do so may be cause for rejection of the bid. The Contracting Officer will return bonds or notes of the United States (1) to unsuccessful bidders as soon as practicable after the opening of bids; and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(b) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(c) Unless otherwise specified in the bid, the Bidder will (1) allow sixty (60) days for acceptance of its bid; and (2) give bond within ten (10) days after receipt of the forms by the Bidder.

(d) In the event the contract is terminated for default, the Bidder is liable for any cost of acquiring the work that exceeds the amount of its bid. The bid bond, or bonds or notes of the United States, is available to offset the difference.

(End of clause)

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

252.247-7114 Additional Services. As prescribed at 247.271-4(b)(13), insert the following clause:

ADDITIONAL SERVICES (JUN 1987)

Additional services not included in the schedule, but required for satisfactory completion of the services ordered under this contract shall be provided at a rate comparable to the rate for like services as contained in tenders on file with the ICC, state regulatory bodies, or MTMC, in effect at time of order.

(End of clause)

252.247-7200 Reserved.

252.247-7201 Reserved.

252.247-7202 Representation of Extent of Transportation by Sea. As prescribed in 247.574(a), insert the following provision, in full text, in solicitations other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13, or those where the contracting officer knows that ocean transportation of supplies as defined in 247.571 will not occur in the performance of the contract or a subcontract thereunder.

REPRESENTATION OF EXTENT OF TRANSPORTATION OF SUPPLIES BY SEA (MAR 1989)

The clause at 252.247-7203, Transportation of Supplies by Sea, will be included in any contract resulting from this solicitation. The Offeror is required to indicate whether transportation by sea is anticipated under the resultant contract by checking the appropriate blank as follows:

> The Offeror represents that it ____ does ____ does not anticipate that any of the supplies, as defined in the above-referenced clause, will be transported by sea in the performance of any contract or subcontract resulting from this solicitation. Notwithstanding this representation, the Offeror recognizes and will comply with the requirements of the above-referenced clause.
>
> **(End of representation)**

(End of provision)

252.247-7203 **Transportation of Supplies by Sea.** As prescribed in 247.574, insert the following clause in all solicitations and contracts other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR Part 13.

TRANSPORTATION OF SUPPLIES BY SEA (MAR 1989)

(a) As used in this clause:

(1) "Armed services" means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

(2) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication or assembly by the Contractor or any subcontractor.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property except land and interests in land that is readily identifiable for eventual use by the armed services, or owned by the armed services, at the time of transportation by sea. It includes (but is not limited to) public works, buildings and facilities, ships, floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools, material, equipment, and stores of all kinds; end items, construction materials and the components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall employ United States-flag vessels, and no others, in the transportation by sea of any supplies to be furnished in the performance of its contractual obligations.

(c) If the Contractor or a subcontractor believes that (1) U.S.-flag vessels are not available for timely shipment; (2) the freight charges are excessive or unreasonable; or (3) freight charges are higher than charges to private persons for transportation of like goods, the Prime Contractor, including subcontractors through the Prime Contractor, may request from the Contracting Officer, in accordance with paragraph (d) below, authorization to ship in foreign-flag vessels or designation of available U.S.-flag vessels. If the Prime Contractor's request to ship supplies in foreign-flag vessels,

whether on its own account or on account of a subcontractor, is granted in writing by the Contracting Officer, the supplies may be shipped on foreign-flag vessels in accordance with the approval. The Contracting Officer may condition approval to ship on a foreign-flag vessel on an equitable adjustment of the contract.

(d) The request for use of other than U.S.-flag vessels must be submitted in writing by or through the Prime Contractor to the Contracting Officer at least forty-five (45) days for matters concerning freight charges or for matters concerning availability prior to the sailing date for the shipper to meet its delivery schedules. Requests submitted after such date(s) will be processed as expeditiously as possible but the failure of the appropriate official to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. The request shall contain at a minimum:

(1) Type, weight, and cube of cargo.
(2) Required shipping date.
(3) Special handling and discharge requirements.
(4) Loading and discharge points.
(5) Name of shipper and consignee.
(6) Prime contract number.
(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact with at least two (2) U.S.-flag carriers contacted by name and telephone number. Copies of telephone notes, telegraphic and facsimile messages or letters will be sufficient for this purpose.
(8) Certification, to the best of the certifying official's knowledge and belief, that the information provided under this paragraph (d) is accurate, complete and current as of the date of submission and that good faith efforts have been made to secure U.S.-flag transportation in a timely and efficient manner.
(9) Signature of an official of the Contractor eligible to sign claim certification under FAR 33.207(c).

(e) The Contractor agrees to furnish with each invoice submitted for payment a copy of the rated on-board vessel operating carrier's ocean-bills-of-lading executed since the date of the award of the contract, or executed since the previously submitted invoice. The operating carrier's ocean-bills-of-lading shall contain the following information:

(1) Applicable Government prime contract number;
(2) Name of vessel;
(3) Vessel flag of registry;
(4) Date of loading;
(5) Port of loading;
(6) Port of final discharge;
(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;
(9) Total ocean freight in U.S. dollars.
(10) Name of the steamship company.

(f) The Prime Contractor shall ensure that within thirty (30) days after each shipment covered by this clause the shipper shall provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the shipping document cited in paragraph (e), reflecting each shipment made under the contract.

(g) Along with the submission of its final invoice under this contract the Contractor agrees to provide a representation that to the best of its knowledge and belief:

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only United States-flag vessels were used for all ocean shipments under the contract. Legible copies of rated on-board ocean-bills-of-lading or similar shipping documents have been submitted with the applicable invoices to the payment office, to the Contracting Officer and to the Maritime Administration in accordance with paragraphs (e) and (f) of this clause;

(3) Ocean transportation was used, and to the extent any non-U.S.-flag vessels were used, the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. These shipments were as follows:

ITEM DESCRIPTION	CONTRACT LINE ITEMS	QUANTITY
Total		

(h) If the final invoice does not include the required representations and documentation, it will be rejected and returned to the Contractor as an improper invoice for the purposes of the clause of the contract entitled "Prompt Payment". In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(i) The Contractor shall include this clause, including this paragraph (i), revised as necessary to reflect the relationship of the contracting parties, in all subcontracts hereunder.

(End of clause)

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